

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE EASTERN DISTRICT OF TEXAS  
3                   MARSHALL DIVISION

4   ANTHONY BLACKSHIRE                   ) (  
5                                           ) (   CIVIL DOCKET NO.  
6                                           ) (   2:09-CV-329-TJW  
7   VS.                                    ) (   MARSHALL, TEXAS  
8                                           ) (  
9   TYSON FOODS, INC.                    ) (   AUGUST 23, 2010  
10                                         ) (   11:20 A.M.

11                                         TRIAL  
12                   BEFORE THE HONORABLE JUDGE T. JOHN WARD  
13                   UNITED STATES DISTRICT JUDGE  
14                   VOLUME 1 OF 2

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1                   LAW CLERK: All rise.

2                   THE COURT: All right. Everyone please be  
3 seated. Well, I got y'all sort of up and down like  
4 jumping jacks. At this time, you're going to need to  
5 take the oath of office. So you'll stand while  
6 Ms. Andrews -- the jurors -- she's going to administer  
7 the oath of office. Raise your right hand, please.

8                   (Jurors sworn.)

9                   THE COURT: Please be seated.

10                  Ladies and gentlemen, you now constitute the  
11 jury in this case, and I -- the first thing I need to do  
12 is give you some preliminary instructions.

13                  Schedule-wise, we're going to hear opening  
14 statements before we break for lunch. We may break a  
15 little after 12:00 today, but, ordinarily, we'll break  
16 right at 12:00. We'll take a mid after -- and we'll  
17 have about an hour and 15 minutes for lunch when we  
18 break, and then we'll come back and go until not later  
19 than 5:30. We'll break between 5:00 and 5:30. And then  
20 we'll start in the morning, start -- we'll start the  
21 trial at 8:30 in the morning. And we'll go 8:30 until  
22 12:00 with a midmorning break and then the afternoon.  
23 So that's the way -- we come a little earlier than some  
24 courts, but we get more done, we think, that way.

25                  My preliminary instructions. First thing I

1 want you to know that -- you're going to hear first  
2 thing here in just a few minutes, opening statements  
3 from the attorney for the plaintiff, and he will tell  
4 you what he expects to prove in this case. After he has  
5 concluded his opening statement, then the attorney for  
6 the defendant will give his opening statement and his  
7 version of the facts and what he believes he will prove.  
8 Or if the attorney for the defendant so desires, he may  
9 make his opening statement at the conclusion of the  
10 plaintiff's presentation of evidence.

11 It's important that you remember that these  
12 statements are not evidence in the case. The only  
13 evidence which will be before you will be that from the  
14 witness stands, the stipulations from the party, and the  
15 exhibits that are received into evidence.

16 Do we have any video -- any depositions that  
17 we're going to use at all?

18 MR. MAYER: No, Your Honor.

19 MR. PIERCE: No, Your Honor, I don't believe  
20 so.

21 THE COURT: Okay. Now, following the  
22 opening statements, that's when you'll begin hearing the  
23 actual evidence. After -- the plaintiff will, of  
24 course, present their evidence first. After he's  
25 concluded with his presentation of the evidence, then

1 the defendant will do the same.

2           At the close of the defendant's testimony,  
3 the plaintiff has the right to bring in rebuttal  
4 testimony, and the defendant may desire to offer  
5 rebuttal testimony to the plaintiff's rebuttal  
6 testimony. But after all of the evidence has been  
7 presented here in Court, the Court will recess for the  
8 purpose of preparing my final instructions and  
9 final charge. Thereafter, the Court will return, and  
10 the attorneys will then present to you their arguments.  
11 Plaintiff will argue first, then the defendant, and then  
12 the plaintiff will present his final closing arguments.

13           Following the arguments, I will give you  
14 instructions as to the law, after which you will retire  
15 for the purpose of deliberating on your verdict.

16           Now, I'm going to give you some general  
17 instructions and definitions that will apply to the  
18 trial of this suit. I notice that during voir dire,  
19 several of you had served in state court in -- in  
20 juries. One of the major differences that you're going  
21 to observe is that all of my instructions -- the charge  
22 will be oral. It's important that you listen to me and  
23 try to remember what I say. Sometime during the  
24 deliberation you need some of them repeated, I'll bring  
25 you back and repeat them, but what you will receive at



1 the end of the evidence and after my final instructions  
2 are a series of questions to be answered, and that will  
3 be your verdict form. So that's one big difference.

4 And these initial instructions, they're an  
5 important phase, and so I do ask that since you will be  
6 called upon to recall what I've said to you in the way  
7 of instructions, apply them to the evidence, I ask that  
8 you pay close attention to the remarks.

9 You as jurors are the triers of the facts,  
10 and to that extent, you are the exclusive judges of the  
11 facts. The law you will receive from the Court, and you  
12 will be bound by the law as I give it to you. It is not  
13 your province to decide whether it's a good law or a bad  
14 law. Nor will you deliberate upon the correctness of  
15 the law, but you will accept the law as given to you by  
16 the Court and be bound thereby. However, you are the  
17 exclusive judges of the facts, the credibility of the  
18 evidence, and the weight to be given the testimony of  
19 the witnesses.

20 Now, by this term "credible testimony," we  
21 simply mean such testimony as may be deemed worthy of  
22 your belief. You have the exclusive right to decide the  
23 facts under the credible testimony, and you may believe  
24 all of the testimony, you may believe none of the  
25 testimony, or you may believe any portion of it which

1     you believe to be credible and worthy of belief.

2                     Another way of saying this is that you are  
3     the searchers of the true facts. And after you have  
4     found the true facts, then, of course, you will be  
5     governed by your discovery in reaching your verdict in  
6     this case.

7                     Now, generally speaking, there's two types  
8     of evidence from which a jury may properly find the  
9     truth as to the facts of a case. One is direct  
10    evidence, such as the testimony of an eyewitness. The  
11    other is indirect or circumstantial evidence. That is  
12    the proof of a chain of circumstances pointing to the  
13    existence or nonexistence of certain facts.

14                    An example is -- I know we came to work this  
15    morning. I came through a shower, so I know it rained  
16    over on the route that I took from Longview over here  
17    this morning, avoiding I-20 since it's under  
18    construction. But it was dry when I got to Marshall.  
19    Let's say when we go out here at lunch, there's water on  
20    the sidewalk. We haven't heard any thunder, but there  
21    is -- it's wet. Somebody looks around and says, well,  
22    you know, there's a water hose there and there's more  
23    water in the flower bed that didn't come from rain, I  
24    don't believe. You know, they were watering, and they  
25    let the water run too long. That would be sort of

1     circumstantial evidence where you could come to a  
2     conclusion.

3                     I just give you that as an example of a  
4     chain of circumstances pointing to the existence or  
5     nonexistence of certain facts. But as a general rule  
6     the law makes no distinction between direct and  
7     circumstantial evidence, but it simply requires a jury  
8     to find the facts in accordance with the preponderance  
9     of the evidence, both direct and circumstantial.

10                    Now, talk a little bit about preponderance  
11    of the evidence. I believe maybe that counsel has been  
12    listening to -- or watching me before about giving  
13    examples, but the burden is on the plaintiff in a civil  
14    action such as this to prove every essential element of  
15    his claim by a preponderance of the evidence.

16                    Now, if the proof should fail to establish  
17    any essential element of the plaintiff's claim by a  
18    preponderance of the evidence in the case, the jury  
19    should find for the defendant. To establish by a  
20    preponderance of the evidence means to prove that  
21    something is more likely so than not so. In other  
22    words, a preponderance of the evidence in the case means  
23    such evidence as when considered and compared with that  
24    opposed to it has the more convincing force and produces  
25    in your minds a belief that what is sought to be proved

1 is more likely true than not true.

2 Counsel mentioned the scales of justice as  
3 they are on this statue right here in front of me, and  
4 he has -- I've given this example many times to  
5 visualize the preponderance of the evidence. If at the  
6 end of the case when you weigh and decide what you  
7 believe and don't believe, if you believe that more  
8 likely so than not that the scales are tipped every so  
9 slightly in terms of the plaintiff after you have  
10 weighed the evidence, that he is -- the plaintiff has  
11 met their burden of proof by a preponderance of the  
12 evidence because it's the greater weight. So if the  
13 scales tip ever so slightly, the plaintiff has, in fact,  
14 met their burden of proof.

15 But in determining whether any fact and  
16 issue has been proved by a preponderance in the case,  
17 the jury may, unless otherwise instructed, consider the  
18 testimony of all witnesses regardless of who may have  
19 called them and all exhibits received in evidence  
20 regardless who -- who may have produced them.

21 Now, statements and arguments of counsel are  
22 not evidence in the case unless they're made as an  
23 admission or stipulation of a fact. When the attorneys  
24 on both sides stipulate or agree to the existence of a  
25 fact, the jury must, unless otherwise instructed, accept

1 the stipulation as evidence and regard that fact as  
2 conclusively proved.

3 Any evidence as to which an objection is  
4 sustained by the Court and any evidence ordered stricken  
5 by the Court must be entirely disregarded.

6 Anything you may have heard or seen outside  
7 the courtroom touching the merits of the case is not  
8 evidence and must be entirely disregarded.

9 Now, you are to consider only the evidence  
10 in the case, but your consideration of the evidence, in  
11 that consideration, you are not limited to the bald  
12 statements of what the witnesses say. In other words,  
13 you're not limited solely to what you see and hear as  
14 the witnesses testify. On the contrary, you are  
15 permitted to draw from facts which have been proved such  
16 reasonable inferences as seem justified in light of your  
17 experience.

18 Counsel mentioned your common sense. Your  
19 collective wisdom as jurors and your collective common  
20 sense is the best tool you have for resolving this case.  
21 That's what separates you from the rest of the  
22 participants in the case, including myself, because you  
23 have your -- the collection of ten of you to apply your  
24 common sense to the evidence and decide what the most  
25 credible version of the facts is. That's up to you. So

1    whatever you do, don't leave your common sense outside  
2    this courtroom. Bring it in with you. It's the best  
3    tool you have.

4                    You as jurors are the sole judges of the  
5    credibility of the witnesses and the weight their  
6    testimony deserves. You should carefully scrutinize  
7    all the testimony given, the circumstances under which  
8    each witness has testified and every matter in  
9    evidence which tends to indicate whether a witness is  
10   worthy of belief. Consider each witness's intelligence,  
11   motive, and state of mind and demeanor and manner while  
12   on the stand. Consider also any relation each witness  
13   might bear to either side of the case, the manner in  
14   which each witness might be affected by the verdict,  
15   and the extent to which, if at all, such a witness is  
16   either supported or contradicted by other evidence in  
17   the case.

18                   Now, inconsistencies or discrepancies in the  
19   testimony of different witnesses may or may not cause  
20   the jury to discredit such testimony. Two or more  
21   persons witnessing an incident or transaction may see  
22   or hear it differently. And innocent misrecollection,  
23   like failure of recollection, is not an uncommon  
24   experience. In weighing the effect of a discrepancy,  
25   always consider whether it pertains to a matter of

1 importance or whether it's an unimportant detail and  
2 whether the discrepancy results from innocent error or  
3 intentional falsehood.

4           After making your own judgment, you will  
5 give the testimony of each witness such credibility, if  
6 any, as you may think it deserves.

7           Now, the rules of evidence ordinarily do not  
8 permit witnesses to testify as to opinions or  
9 conclusions. An exception to this rule exists as to  
10 those whom we call expert witnesses. These are  
11 witnesses who by reason of their education and  
12 experience have become expert in some art, science,  
13 profession, or calling and may state an opinion as to  
14 relevant and material matter in which they profess to  
15 be expert and may also state their reasons for the  
16 opinion.

17           You should consider each expert opinion  
18 received in evidence in this case and give it such  
19 weight as you may think it deserves. If you should  
20 decide that the opinion of an expert witness is not  
21 based upon sufficient education and experience or if you  
22 should conclude that the reasons given in support of the  
23 opinion are not sound, you may reject the opinion  
24 entirely.

25           You know, it's the duty of each attorney to

1 object when the other side offers testimony or other  
2 evidence which that attorney believes is not properly  
3 admissible.

4               Now, upon allowing testimony or other  
5 evidence to be introduced over the objection of an  
6 attorney, the Court does not, unless expressly stated,  
7 indicate any opinion as to the weight or the effect of  
8 such evidence. I tell you again, you, the jury, are the  
9 sole judges of the credibility of the witnesses and the  
10 weight and effect of the evidence.

11              Now, in the event the Court sustains an  
12 objection to a -- addressed to a witness, the jury must  
13 disregard the question entirely and may draw no  
14 inferences from the wording of it or speculate as to  
15 what the witness would have said if permitted to  
16 answer.

17              It's important that you consider all the  
18 evidence in the case, which means you need to be sure  
19 that you don't make up your mind about this case until  
20 you've heard evidence on both sides, you've heard the  
21 arguments of counsel, and you've heard my final  
22 instructions.

23              Judge David Folsom, who is a judge up in  
24 Texarkana -- he comes down here twice a year -- he gives  
25 an example that I like to use. I didn't -- I had never



1     used it until I heard Judge Folsom give it. Remember  
2     that a lawsuit is something like making a pancake.  
3     There's just always two sides to it. So just be sure  
4     you wait until we get both sides in before we make any  
5     decisions.

6                 Finally, I want to tell you that the law of  
7     the United States permits the judge to comment to the  
8     jury on the evidence in the case. However, such  
9     comments are only expressions of the judge's opinions  
10    as to the facts, and the jury may disregard these  
11    comments since you, the jury, are the sole judges of the  
12    facts.

13                Is the witness to be -- I mean, the rule on  
14    witnesses to be invoked in this case?

15                MR. PIERCE: Your Honor, it hasn't been  
16    invoked.

17                MR. MAYER: We would ask for it to be, Your  
18    Honor.

19                THE COURT: Okay. Do we have any witnesses  
20    other than the parties in the courtroom at this time?

21                MR. PIERCE: We have our expert witness,  
22    Mr. Madeley, in the back there.

23                THE COURT: All right. Well, I  
24    traditionally excuse those witnesses, but no -- no  
25    others?

1                   MR. PIERCE: No others, Judge.

2                   THE COURT: Okay. Let me explain to the  
3 jury what the rule is and give you some instructions  
4 from the Court.

5                   When we say the rule has been invoked, what  
6 that simply means is that other than the parties or the  
7 representatives of the parties, and I have excluded  
8 experts from the application of the -- of the rule, any  
9 other witness must remain outside the courtroom while  
10 the case is going on until they are called to testify.  
11 They cannot hear any other witness testify.

12                  And the lawyers are instructed to be sure  
13 that -- to explain to the witnesses that from this  
14 point forward, they can only discuss their testimony  
15 with the lawyer. And the lawyer has the duty and  
16 obligation, as well as the witness, to be sure that  
17 they are outside of earshot of any other witness when  
18 they're discussing their testimony. The lawyers can  
19 certainly talk to them, but they cannot talk to them  
20 with other witnesses present. And so they -- that's the  
21 lawyer's duty to be sure that the witnesses realize  
22 that.

23                  All right. Who will be the plaintiff's  
24 first witness?

25                  MR. SKRABANEK: Plaintiff is going to call

1 Mr. Anthony Blackshire.

2 THE COURT: All right. Mr. Blackshire, come  
3 up here and take the oath, please.

4 Oh, I haven't given you opening statements.  
5 Sorry. No, Mr. Blackshire, have a seat. We've got  
6 opening statements.

7 The Court's just moving them a little faster  
8 than I should have. That's the Court's fault.

9 You're going to make an opening statement,  
10 Counsel?

11 MR. SKRABANEK: Yes, Your Honor.

12 THE COURT: From the podium, please. I'll  
13 give you a five-minute warning if you need it.

14 MR. SKRABANEK: May it please the Court.

15 THE COURT: Counsel.

16 MR. SKRABANEK: Good morning. My name is  
17 Paul Skrabanek. I'm here with Michael Pierce and  
18 co-counsel, Chad Newman. And we're proud to represent  
19 Anthony Blackshire.

20 Mr. Blackshire was born just south of here  
21 in Carthage, Texas. He finished the 11th grade before  
22 he went to work. He didn't get a GED. He has no  
23 college education beyond high school. I say this all  
24 not to belittle the man but because it's going to be  
25 very important in this case.

1                   Ultimately, in 2002, Mr. Blackshire went to  
2     work for the -- for Tyson in the Carthage facility, in  
3     their Carthage facility. He worked at a number of  
4     positions as he worked his way through the company. He  
5     started out in the dump tub station, which is dumping  
6     chickens onto a line. Moved into the Marination  
7     Department. Moved his way into the Mix Department,  
8     which is mixing ingredients into the chickens so they  
9     can be put out to the public at large.

10                  Ultimately, he was promoted to the cooler  
11    area in what is called a stack off position in the  
12    cooler area in 2007. It's important to note that he  
13    worked without incident up until October of 2007 when he  
14    was struck by a runaway pallet jack.

15                  Now, I'm going to show you kind of what  
16    we've been talking about. You've heard a lot about  
17    it in voir dire, what this pallet jack looks like.  
18    There we go. It's got a couple of forks on the front  
19    there, and these are motorized pallet jacks. And how  
20    they're designed to work is that you've got a handle  
21    on these pallet jacks. And here's a picture of the  
22    handle.

23                  And what you do is you pull the handle down,  
24    and you -- it walks behind you, and you walk in front of  
25    it as it moves. And there's a little twist handle, as

1     you can see right here. It's kind of like a motorcycle.  
2     When you twist it, it moves with your motion.

3                     And under ideal conditions, when you let one  
4     of these handles go, it snaps back with a spring and  
5     stops the pallet jack dead in its tracks. That's how  
6     it's supposed to work under ideal conditions.

7                     You're going to hear testimony from  
8     Mr. Blackshire that there were a number of incidents at  
9     the Tyson facility involving pallet jacks before his  
10    incident. You're going to hear him talk about a  
11    co-worker of his named Jose who he personally witnessed  
12    being run over, his ankle and foot, with a pallet jack,  
13    a runaway pallet jack.

14                    You're also going to hear testimony from  
15    Mr. Blackshire that he had a conversation with his  
16    supervisor --

17                    MR. MAYER: Objection, Your Honor. Calls  
18    for hearsay, argumentive.

19                    THE COURT: Overruled.

20                    MR. SKRABANEK: You're also going to hear  
21    from Mr. Blackshire that he had a conversation with his  
22    direct supervisor, Patricia Williams, who you will meet  
23    here as a witness. And what Mr. Blackshire told her is  
24    that he -- he warned her and put her on notice about  
25    some problems he was having personally with pallet

1 jacks.

2                   Specifically as he would move his pallet  
3 jack into an area in the stack off area, he would let it  
4 go. And when you let go, it's supposed to stop, but it  
5 would continue to move even after it sprang back.

6                   So Tyson -- he put Tyson on notice, and what  
7 you're going to hear is they did nothing.

8                   In fact, back in 2007, Tyson kept  
9 maintenance records for each of their pallet jacks.  
10 You're not going to see a single maintenance record in  
11 this case. I have not seen a maintenance record. Ask  
12 yourself why. It's because they conveniently  
13 disappeared sometime after this accident.

14                   So let me back up to the actual incident  
15 itself. It happened in October 2007. Ms. Williams  
16 comes into Mr. Blackshire that morning and says, "I need  
17 you to move a pallet of chickens in -- within the cooler  
18 area." So he stacks his pallet jack full of boxes of  
19 chickens, and he goes to move it, pulls the handle down,  
20 and he's walking within the cooler. He sees a co-worker  
21 coming from behind him in the loading area, and what  
22 he's supposed to do at that point is yield the way so  
23 they can unload these trucks.

24                   So what he does is he lets go of the handle.  
25 It snaps back. It stops. Takes four or five steps back

1 from the pallet jack, looks over his right shoulder back  
2 to the area where he will next be working, thinking  
3 about what he's going to be doing. His co-worker passes  
4 him, and not a split second later as he's turning back,  
5 over his shoulder, he sees the handle down and the  
6 pallet jack coming at him.

7                   It strikes him in the midsection, the handle  
8 does, and it pins him up against a concrete barrier  
9 that's in the hallway of this Tyson facility, bends him  
10 back over the concrete barrier. Ultimately, later down  
11 the line he learns he has a fractured vertebrae.

12                   He immediately reports this incident to  
13 Tyson. Goes in to see the nurse. This is a Friday.  
14 He's going to try to tough it out over the weekend. But  
15 he wakes up Saturday in so much pain, he goes to the  
16 emergency room. Ultimately, comes back to Tyson on  
17 Monday and has a sit-down with the nurse medic who  
18 you're going to meet. Her name is Jessica Gatlin.

19                   Ms. Gatlin presents Mr. Blackshire with a  
20 prepackaged stack of documents. It's the workplace  
21 injury settlement program that Tyson has.

22                   You're going to hear from Mr. Blackshire.  
23 He doesn't understand a bit of what this was. They go  
24 through these documents or -- and there's some doctors  
25 on these lists, and Ms. Gatlin helps him pick a doctor

1     that's on Tyson's list to go see, a doctor named  
2     Dr. Nielsen.

3                 Mr. Blackshire goes and sees Dr. Nielsen and  
4     a set number of days later is called back into  
5     Ms. Gatlin's office. At this -- and let me back up for  
6     a second. On this first meeting, they actually filled  
7     out an accident report.

8                 I'm going to show you this. This was filled  
9     out, and it talks about Mr. Blackshire's incident  
10    itself. You're going to hear from Ms. Gatlin that she  
11    actually -- that her handwriting is actually found 1, 2,  
12    and No. 3, those words written in there by her. And  
13    you're going to hear her testify that the reason that  
14    she had to write these words in here is because she  
15    thought that Mr. Blackshire did not understand what this  
16    form meant. Something so basic as, No. 2, "Describe  
17    what you were doing when the accident happened." Did  
18    not think he could understand that, so had to help him  
19    fill it out. That happens on the first meeting with him  
20    and Ms. Gatlin.

21                When he's called back the next time, he's  
22    presented with another stack of papers, and this is  
23    called a waiver form.

24                Now, you're going to hear Tyson's lawyer get  
25    up here and talk about this waiver form and say



1 Mr. Blackshire signed it, and therefore he has no right  
2 to come into court today and talk to you folks and have  
3 you decide his case.

4 What you're going to hear from Mr. -- what  
5 you're going to have to answer at the end of the day,  
6 though, is, one, did he voluntarily sign it? Two, did  
7 he sign it with knowledge of what that document did to  
8 his legal rights?

9 You're going to hear from him that they  
10 said -- that Tyson, Ms. Gatlin, other folks at Tyson  
11 told him, "If you do not sign this document, you will  
12 not be able to see a doctor under our plan."

13 So the first question you've got, did he  
14 sign it voluntarily? Did he sign it voluntarily knowing  
15 that they were hanging his medical care over his head at  
16 that point? You're going to hear that he did not  
17 understand this document when they presented it to him.  
18 As you can see, it's full of legal jargon.

19 And what I submit to you is it is not going  
20 to make a whole lot of sense at the end of the day. On  
21 the one hand, they're going to tell you -- their own  
22 witness, Ms. Gatlin, is going to tell you that  
23 Mr. Blackshire couldn't even understand how to fill in  
24 the part about, "Describe how your accident happened,"  
25 but on the other hand, Tyson is going to tell you

1 crystal clear understood what all of this legal jargon  
2 says in this waiver.

3           Mr. Blackshire and Tyson ultimately parted  
4 ways. And he went a number of months without being able  
5 to see a doctor because he could not afford it on his  
6 own. Ultimately, he ended up seeing a doctor who you  
7 will meet here today, Dr. Kenneth Lee. Dr. Lee put  
8 Mr. Blackshire through a conservative course of  
9 treatment which included physical therapy and steroid  
10 injections into his back. And you will hear a lot about  
11 his care through Dr. Lee -- from Dr. Lee.

12           As you sit here, I'd ask that you consider  
13 two things -- keep two things in mind, actually. One,  
14 when Tyson gets up here and says, "You can't show there  
15 was anything wrong with the pallet jack," ask yourself  
16 where are these records. Where are the maintenance  
17 records?

18           MR. MAYER: Objection, Your Honor. That  
19 violates the motion in limine.

20           THE COURT: Well, let's move on. I'll take  
21 that up outside the presence of the jury.

22           MR. SKRABANEK: Second, I'd like you to  
23 think about the circumstances under which that waiver  
24 was signed, while his medical care was hung over his  
25 head, when he didn't understand these legal documents.

1                   I thank you for your time, and I look  
2 forward to presenting this case to you.

3                   THE COURT: All right. From the defendant?

4                   MR. MAYER: Yes, Your Honor. May it please  
5 the Court. Counsel.

6                   Ladies and gentlemen of the jury,  
7 Mr. Worthington introduced me awhile ago. My name is  
8 Zach Mayer, and I have the privilege of representing  
9 Tyson and the Carthage plant who is being represented  
10 here today by Ms. Vicki Amy. On behalf of the Tyson  
11 Carthage plant, I want to thank each of you for your  
12 time as a juror on this case.

13                  The Judge referenced the fact that other  
14 than serving in the military, serving on the jury might  
15 be the greatest civic duty. I believe that  
16 wholeheartedly. It is -- it is the basis of our  
17 judicial system. None of us likely will have the honor  
18 of being called by the President to give our advice on  
19 something. None of us want to be called by Congress to  
20 testify. We're seeing how that -- that shakes out for  
21 people. But this Court has called each of you to serve  
22 on this case, and for that, I thank you and Tyson thanks  
23 you.

24                  Now, this case is about two simple rules.  
25 First, accepting responsibility for your own actions.

1 Second, and the most important, is living up to a  
2 promise.

3 Mr. Worthington in voir dire talked to you  
4 about how we raise our children. I have two young  
5 girls, and I always try to instill basic principles. I  
6 think if it's basic, they're going to understand it.  
7 And that's what this case is about. It's about, No. 1,  
8 applying basic principles, but then most importantly,  
9 like the Honorable Court said, using your common sense.

10 I think that in this case, that might be the  
11 greatest evidence is that is common sense. If you use  
12 that tool when you're judging the credibility of the  
13 witnesses and you're judging the credibility of the  
14 testimony, in the end, your own common sense will lead  
15 you to the decision that, number one, there was  
16 certainly nothing wrong with that pallet jack that day.  
17 That, number two, Tyson did not act negligent, that they  
18 were certainly reasonable. And then lastly, that  
19 Mr. Blackshire, when he was employed by Tyson, promised  
20 he would not sue them if he accepted benefits.

21 Now, we'll get all that -- into it -- into  
22 it in a second. But first what I want to talk to you  
23 about is Mr. Blackshire's employment with Tyson. You  
24 heard that he was employed at the Carthage -- our  
25 Carthage plant on three different occasions. He had

1 several different jobs while he worked for Tyson. But  
2 during those jobs, he was a pallet jack operator. That  
3 was part of his job. And in order for Tyson to allow  
4 him to do that job, he had to complete a certification.

5 Now, it was -- it was interesting during  
6 voir dire, several people raised their hands that said,  
7 "Yes, I had -- I had operated pallet jacks in the past,"  
8 but I believe only one person, Mr. Reed, it was, from  
9 Wal-Mart, said that he was actually certified. He  
10 described for you that certification process, and it is  
11 the same type of certification that Tyson requires.

12 They made sure that Mr. Blackshire watched a  
13 video on how to operate that pallet jack. They also  
14 made sure that he sat through a classroom training and  
15 he took a test. Part of that classroom training was  
16 obviously in writing. That test was in writing, as  
17 well. He passed the test, but it didn't stop there.

18 The next thing is he had to go out on the  
19 floor and with his supervisor, Patricia Williams, he had  
20 to operate the pallet jack and prove to Tyson that he  
21 could do it safely. Well, Mr. Blackshire proved that he  
22 could operate the pallet jack safely, and you'll find  
23 out in the testimony that part of his job  
24 responsibilities was, in fact, operating a pallet jack.

25 But Tyson didn't stop there. You can

1     imagine these hand-held pallet jacks, they are no cheap  
2     investment on the part of the company. So when  
3     something as important as a pallet jack that they have  
4     on the floor, they make sure that they maintain it.

5                 You're going to hear from Mr. Howard, who is  
6     the manager -- the maintenance manager at Tyson, and  
7     what he's going to talk to you about is how they  
8     maintain it. We'll talk about it more in a second. But  
9     remember that not only just like Wal-Mart, Tyson also  
10    requires the operator, the person in charge of the  
11    pallet jack, before they even move that -- that  
12    machinery, to make sure that it's operating properly,  
13    first and foremost. Then there's also weekly, monthly,  
14    and quarterly servicing.

15                What the testimony from the Tyson employees  
16    in this case is going to show, they had a maintenance  
17    program in place and never once was any issue raised  
18    about a runaway or accelerating pallet jack.

19                So let's talk about the facts in the case,  
20    the credible facts, the convincing facts. First of all,  
21    on October 26, 2007, Mr. Blackshire shows up for work.  
22    When he does, he learns that the scheduled pallet jack  
23    operator had called in sick. So Ms. Williams, his  
24    supervisor, came to Mr. Blackshire and said, "We need  
25    you to fill in as the pallet jack operator that day."

1           Mr. Blackshire did not raise any concern,  
2   any complaint, or any issue about operating that pallet  
3   jack that morning. Shift starts at about 6:00 a.m.  
4   Ms. Williams, knowing that Mr. -- Mr. Blackshire had  
5   operated the pallet jack in the past, was comfortable  
6   with him being out on the floor.

7           Around midday -- and this is important --  
8   around midday, Mr. Blackshire came to Ms. Williams and  
9   reported to her that as he was operating the pallet  
10   jack, he pinned himself against the pole. That's what  
11   he told Ms. Williams, that he pinned himself against the  
12   pole. Well, Ms. Williams, because she was the  
13   supervisor, learning that there was something that  
14   occurred, said, "You need to go see the nurse,  
15   Ms. Gatlin." She's the plant nurse, and she will also  
16   testify, that when Mr. Blackshire came into his  
17   office -- or her office, he said to her, "Ma'am, I was  
18   operating the pallet jack, and I pinned myself against  
19   the pole." Nothing about a runaway jack, nothing about  
20   an accelerating jack, and certainly nothing about a  
21   malfunctioning jack.

22           What's interesting is the first time that  
23   anyone from Tyson ever heard anything about the runaway  
24   jack was when Mr. Blackshire hired a lawyer and sued  
25   Tyson in this Court. That was the first time Tyson ever

1     figured out that Mr. Blackshire was alleging somehow  
2     some way that the jack accelerated towards him and  
3     pinned him on its own.

4                 So let's -- let's talk about these jacks for  
5     a second and how Tyson gets them. First of all, they  
6     buy them new from the manufacturer, Crown, every three  
7     years. So they replace the jacks consistently every  
8     three years, whether they need it or not, just to make  
9     sure they've got new jacks on the floor.

10                Secondly, Larry Howard, he is the man in  
11     charge of maintenance at Tyson. What he will testify  
12     is, number one, we stress to our employees who are  
13     operating any piece of machinery, but especially pallet  
14     jacks, to properly inspect it before they ever start  
15     operating that day. And if they find anything out, just  
16     like Mr. Reed said, Lockout/Tagout, don't use that  
17     machinery. Mr. Howard is going to say, if -- if anyone  
18     had brought a problem to his attention, he would have  
19     made sure that that pallet jack was not being operated.  
20     But no one did.

21                Secondly, he's going to say, "My crew -- my  
22     maintenance crew makes it a point to do a weekly and a  
23     monthly inspection of the pallet jacks to make sure  
24     there's nothing wrong with them." Then they do a  
25     quarterly servicing of the pallet jacks. And at that



1 time, they actually pull it out of service. They check  
2 the fluids. They check the battery. They check the  
3 wheels, make sure that that breaking device that we were  
4 just talking about, that it's operating properly. And  
5 Mr. Howard will say that there are at least four safety  
6 devices that would have had to have failed for  
7 Mr. Blackshire's version of the incident to be true.

8 He'll also say that he's never heard of any  
9 of those four mechanisms failing and having a pallet  
10 jack run out of control into an employee. It's never  
11 reported. Mr. Howard says that that is virtually  
12 impossible, based upon his involvement with the pallet  
13 jacks at Tyson.

14 So let's go back to Mr. Blackshire's injury.  
15 He reported the injury on October 26th. At that point  
16 in time, he completed his shift and he left for the day.  
17 He didn't come back to work for a few more days, and  
18 actually started on November 1st. When he came back to  
19 work on November 1st, he reported the injury to  
20 Ms. Gatlin again. He said, "While I was on the job, I  
21 was injured."

22 Now, there was some discussion during voir  
23 dire about a nonsubscriber. And I think we need to  
24 explain in a little bit more detail what that means.  
25 Basically, Tyson, on their own, said that "We are going

1 to provide our employees with a work injury settlement  
2 program." It's similar to the Texas Workers' Comp  
3 program, but it's actually better. What you're going to  
4 hear is that the benefits that Tyson provides to their  
5 employees, number one, is higher than the State program.  
6 They get a larger percentage of their lost wages. And,  
7 number two, that the benefits kick in earlier than what  
8 the Texas Workers' Comp program does.

9           So Tyson takes it upon themselves to manage  
10 their own program, but also provides their employees  
11 with greater protection. And you will find that in  
12 exchange for accepting these benefits, for getting your  
13 lost wages paid and your medical benefits paid, that the  
14 employee has to live up to one promise. And that is  
15 after accepting the benefits, they won't turn around and  
16 sue Tyson. Can't have it both ways. You can't accept  
17 the benefits, have Tyson pay for the medicals, and then  
18 turn around and sue them.

19           Now, I understand that according to the  
20 plaintiff's contention in this case is that this waiver  
21 is somewhat confusing. And what I'd like to do is look  
22 at one section of that waiver. In the middle of the  
23 document it says: "I understand that I must accept the  
24 rules and conditions of the program and waive my right  
25 to sue the company."

1                   That was the promise that Mr. Blackshire is  
2     saying was confusing. That was the promise that he  
3     broke when he first brought this lawsuit and for the  
4     first time alleged this runaway pallet jack.

5                   You see, what's also important is that as of  
6     that November 1st date, Mr. Blackshire went to see a  
7     couple of different doctors. One of the doctors was  
8     through the East Texas Medical Center, and they treated  
9     him for a hairline fracture in his vertebrae. How did  
10    they treat it? They gave him some pain medication.  
11    They gave him some physical therapy, and he's going to  
12    say all that treatment helped, that was -- it was  
13    helpful, and Tyson paid for all of it. They paid for  
14    every dollar of that medical care, even though Tyson did  
15    not believe they did anything wrong or anything to cause  
16    his injuries. Because they had this program in place,  
17    it was their deal, if you accept the benefits, it  
18    doesn't matter whether we believe we're responsible for  
19    the incident or not, we're going to pay for it. But you  
20    have to live up to your promise and then not turn around  
21    and sue.

22                  So when you're listening to the credible  
23    evidence in this case, what you're going to find is for  
24    three months after this incident, Tyson paid for his  
25    medical benefits. At that time, the physical therapy

1     was working. What Tyson is not willing to pay for in  
2     this case is a doctor that's been hired by the  
3     plaintiff's attorneys who is currently treating  
4     Mr. Blackshire some two, almost three years after the  
5     incident.

6                     Here's what's remarkable is that when he was  
7     injured after the incident, he had that hairline  
8     fracture. Well, like most fractures or sprains, it  
9     heals. And what the doctor is going to say is he's no  
10    longer treating him for a hairline fracture. That has  
11    gone away. After that three months of treatment, it's  
12    over. He's now treating him for something new, a  
13    different problem, a disk bulge. A disk bulge that was  
14    not referenced in any of the medical records for those  
15    three months. He went through a CT scan. He went  
16    through an X-ray. No one said anything about a disk  
17    bulge. But now, three years after the injury, it is  
18    that that Mr. -- that Dr. Lee is treating him for.

19                    Tyson is simply saying that is not in any  
20    way related to the incident. And since Mr. Blackshire  
21    accepted those benefits, he doesn't have the right to  
22    sue.

23                    Another element that they're going to talk  
24    about in this case is future medical expenses. Now, we  
25    all can agree that what -- what's going to happen in the

1 future, none of us know. And -- and the Court doesn't  
2 allow a doctor to come in and talk about possibilities  
3 or what might be expected. They have to talk about  
4 probabilities, that which probably will occur, and it  
5 takes a doctor to say, "Based on reasonable medical  
6 probability, that this future care will occur."

7               So I want you to listen to that evidence,  
8 scrutinize that evidence, and find out if it is  
9 convincing about his future medical care some three  
10 months -- three years after the incident for a  
11 completely different problem.

12               We talked about the burden of proof, and I'm  
13 going to be the third or fourth person who's talked  
14 about it. Obviously, the burden is on the plaintiffs to  
15 prove their case. That burden is real. The Court  
16 referenced it, the plaintiffs have referenced it, and we  
17 have referenced it.

18               They talked about the scales of justice, but  
19 what's really important is that as the defendant in this  
20 case, we don't have a burden. Anyone can file a  
21 lawsuit. So we don't have to prove our case, but we  
22 will. We will prove our case by convincing evidence  
23 that those simple rules that I talked about in the  
24 beginning, living up to your own responsibilities and  
25 making sure that you live up to a promise, those simple

1 rules will be proven in this case by the defense.

2           What we will show is that Mr. Blackshire did  
3 indeed waive his right to sue. We will also show that  
4 Tyson had a training program that was in place that made  
5 Mr. Blackshire a certified pallet jack operator. They  
6 had a maintenance program in place that took care of  
7 these pallet jacks, that they had no knowledge of any  
8 prior -- prior incidents with this pallet jack, and they  
9 were certainly reasonable as an employer for  
10 Mr. Blackshire.

11           In the end, that's what the credible  
12 evidence will show. Again, on behalf of Tyson, we  
13 certainly thank you for your time. We look forward to  
14 working with you in this case.

15           THE COURT: Thank you, Counsel.

16           All right. Ladies and gentlemen, we're  
17 moving along a little quicker. I guess they thought I  
18 wasn't going to give them an opening statement. They  
19 decided they'd use their time wisely.

20           We'll go ahead and take our lunch break.  
21 Come back at five after the hour -- five after 1:00  
22 o'clock, and we'll -- we'll start hearing the evidence  
23 in this case.

24           Now, it's very important to not discuss the  
25 case among yourselves. Of course, right now you've

1 heard no evidence, but you shouldn't be speculating  
2 about what the case is about or anything. Just don't  
3 discuss the case during these breaks at all. And if  
4 you'll do that, have a nice lunch, and I'll see you back  
5 at five after the hour. You may leave the courtroom at  
6 this time.

7 LAW CLERK: All rise for the jury.

8 THE COURT: Right out this way, ladies and  
9 gentlemen. This door should be unlocked. Let's hope it  
10 is.

11 (Jury out.)

12 THE COURT: All right. Everyone please be  
13 seated.

14 All right. Now, Counsel, we agreed to our  
15 motion in limine, and we went over this at pretrial.  
16 You're bumping up against it awful -- are there -- are  
17 there or are there not maintenance records? What are we  
18 talking about?

19 MR. SKRABANEK: Your Honor, you'll hear  
20 testimony from Larry Howard, their maintenance guy, that  
21 they kept maintenance records and then they changed the  
22 system, and they disposed of those records, the paper  
23 records afterwards. So that's all I was referring to.

24 THE COURT: Well, you need to -- you know,  
25 all I asked you to do is make sure you approach, and so

1 all you're -- what you're arguing is that they -- it's  
2 not they haven't produced them, you're just saying  
3 they're not in existence at this time?

4 MR. SKRABANEK: Disposed of, yes, Your  
5 Honor.

6 MR. PIERCE: And, Judge, I don't want to  
7 interrupt Mr. Skrabanek, but we're not -- we're not  
8 claiming they spoliated these documents. We're not --

9 THE COURT: I understand that, but I'm not  
10 going to give you any further instructions at this time,  
11 but I'm telling you, you need to be real careful about  
12 getting into something that's covered. You know, it  
13 would be hard to say that at this stage, that you hadn't  
14 indicated that they had failed to do something, at least  
15 that was the in -- certainly the indirect comment.

16 And you don't want me talking to this jury  
17 in this case about your conduct and failing to comply  
18 with my order. So all I ask you to do at the pretrial  
19 is -- is approach the bench if you want to go into  
20 something.

21 Anything from the defendant at this stage?

22 MR. WORTHINGTON: Your Honor, I mean, I  
23 think the Court's made the point, but I recall Counsel  
24 saying the records had conveniently disappeared, and  
25 that's pretty close --



1 THE COURT: Well --

2 MR. WORTHINGTON: -- to spoliation.

3 THE COURT: Well, there's not a claim of  
4 spoliation, but they're not here. That's argumentative  
5 at best. I'm not saying they couldn't say that in  
6 closing statement. We'll take that up, but we don't  
7 want to hear anymore of it.

8 MR. SKRABANEK: I apologize, Your Honor.

9 THE COURT: That's -- you just -- you know,  
10 y'all agreed to all these motions in limine. I didn't  
11 even know this was on the radar, because when he said he  
12 violated the motion in limine, I -- I couldn't remember  
13 that coming up at pretrial, so I read it. But you got  
14 about three paragraphs you might be violating by that  
15 comment.

16 And, Ms. Johnson, I guess you need to  
17 explain to them how serious they're about to get into  
18 trouble here.

19 MS. JOHNSON: Yes, sir, I can do that.

20 THE COURT: She's heard this -- she's seen  
21 this where -- she's seen this where, you know, it starts  
22 getting red right here, and it comes right up. You  
23 don't want that, I promise. I'll see you at five after.

24 MR. SKRABANEK: Yes, Your Honor.

25 THE COURT: Okay. I'll see you at five

1 after.

2 LAW CLERK: All rise.

3 (Recess.)

4 (Jury out.)

5 LAW CLERK: All rise.

6 THE COURT: Please be seated.

7 We've got something about the exhibits now?

8 MR. SKRABANEK: Your Honor, I would just  
9 like to get a ruling on the record about the plaintiff's  
10 exhibits, getting them pre-admitted before we started.  
11 We've met and conferred and gone over the numbers, and  
12 I'd like at this time to offer Plaintiff's 1, 3, 5, 6,  
13 8, 9, 11, 12, 14, 18, 19, and 20.

14 THE COURT: Any objection to those?

15 MR. MAYER: No objection, Your Honor.

16 THE COURT: All right. Those are received  
17 into evidence.

18 Have y'all got a list on the defendants yet  
19 or --

20 MR. MAYER: We re-submitted an agreed list,  
21 as well.

22 THE COURT: All right. Those are -- you  
23 agree to those on the defendant's list?

24 MR. SKRABANEK: Yes, Your Honor.

25 THE COURT: All right. They're -- they're

1 received into evidence.

2 Let's bring in the jury, please.

3 LAW CLERK: All rise for the jury.

4 (Jury in.)

5 THE COURT: All right. Jury be seated.

6 All right. Counsel, y'all be seated.

7 And Mr. Blackshire is your first witness?

8 MR. SKRABANEK: Correct, Your Honor.

9 THE COURT: All right. Come around, sir.

10 Right here -- no, right here, right by Ms. Andrews.

11 (Witness sworn.)

12 ANTHONY BLACKSHIRE,

13 Having first been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. SKRABANEK:

16 Q. Will you go ahead and introduce yourself to the  
17 jury?

18 A. My name is Anthony Blackshire.

19 Q. Mr. Blackshire, where were you born?

20 A. Carthage, Texas.

21 Q. And where did you grow up at?

22 A. Dallas, Texas.

23 Q. Where did you go to high school at in Dallas?

24 A. W. H. Adamson.

25 Q. Did you do any school activities there?

1 A. I played football there.

2 Q. What position did you play?

3 A. Middle linebacker.

4 Q. Now, how far did you go in school,

5 Mr. Blackshire?

6 A. Eleventh grade.

7 Q. What kind of grades did you get when you were in  
8 school?

9 A. Cs and Bs mostly.

10 Q. Did you ever go back and get your GED?

11 A. No, sir.

12 Q. Why not?

13 A. I was working most of the time.

14 THE COURT: Mr. Blackshire, you need to get  
15 a little closer to the microphone a little bit. That's  
16 good.

17 Q. (By Mr. Skrabanek) Why don't we try that last  
18 one again? Why didn't you get your GED?

19 A. I was working, and most of the time I was  
20 planning on going back and getting the GED.

21 Q. Have you ever done any type of college?

22 A. No, sir.

23 Q. Do you like to read at all?

24 A. No, sir.

25 Q. Do you read the newspaper at all?

1       A.  No, sir.

2       Q.  When did you start with Tyson?

3       A.  2002.

4       Q.  And what position did you start in with Tyson?

5       A.  Stacking off chickens.

6       Q.  Just tell the jury a little bit what that -- what  
7       that's about.

8       A.  You get the product -- the chicken -- whole bird  
9       product comes down in a tub, about 60, 70 pounds, you  
10      stack it up on a skid, put it on a pallet, and you stack  
11      it about five high.  It would be 25 on a skid.

12      Q.  Did you move departments within Tyson?

13      A.  Yes, sir.

14      Q.  What was your -- what was your next department at  
15      Tyson?

16      A.  I -- I -- I went to marination.

17      Q.  Tell the jury a little bit about what marination  
18      does.

19      A.  They do process chickens -- the same thing in a  
20      box, and it mostly be in the tub and the box.  They  
21      process it into the box to get ready to go to the -- to  
22      a -- to the company who pay for the chicken.  You  
23      process it.

24      Q.  Did you move to another department after  
25      marination?

1       A. I have got a promotion to mix man.

2       Q. What year was that?

3       A. Say 2004.

4       Q. Okay. What did you do as a mix man?

5       A. Made sure all the ingredients be -- cold  
6       temperature within the chicken, like we put lemon  
7       pepper, onion pepper, or stuff like that and take care  
8       of your paperwork and make sure -- you document all your  
9       chemicals that you put in the paperwork.

10      Q. How long did you stay as a mix man?

11      A. I done it for a year.

12      Q. And then where did you go?

13      A. I got a promotion to the deep freezer.

14      Q. And what were you doing in the deep freezer?

15      A. My job was clicking -- was to back off the -- the  
16      product coming off the line, the chicken off the line  
17      into another plastic skid to go on the truck.

18      Q. Let's talk a little bit about pallet jacks,  
19      Mr. Blackshire. Can you tell the jury what a pallet  
20      jack is?

21      A. It's an instrument to move all the heavy loads  
22      around when a person can't pick it up. It's too heavy  
23      for a person to pick it up because you have a lot of  
24      weight on it -- on the skid.

25      Q. Do you see the screen?

1       A.  Yes, sir.

2       Q.  Is -- what's on the screen up there, does that  
3 look like what a pallet jack is?

4       A.  Yes, sir.

5       Q.  Does that look like the pallet jacks you used at  
6 Tyson?

7       A.  Yes, sir.

8       Q.  Tell the jury a little bit about how you operate  
9 one of those pallet jacks.

10      A.  To operate the pallet jack, you have to control  
11 it by the handle up in the front right there.  You got  
12 to throttle it.  You got to move the -- like a  
13 motorcycle, varoom, varoom, and you got to throttle it.  
14 And you can go forward, or you can move the throttle  
15 back and go backwards.  You operate -- you control the  
16 whole jack with the handle in front of you there.

17      Q.  Does this look like a picture, as well?

18      A.  Yes, sir.

19      Q.  Let me just show you -- this is a close-up  
20 picture of the handle.

21      A.  Yes, sir.

22      Q.  Tell the jury how -- explain to them how this  
23 handle works and how you move the pallet jack with it.

24      A.  The two bar -- like the grip right there on right  
25 and left side, the grip, that's what make the jack go

1 forward. When you twist the grip going backwards, it  
2 will make the jack go backwards. The handle would make  
3 it turn right and left at -- when you did it like this,  
4 it will go right or go left with you.

5 Q. How do you walk with the pallet jack as you're  
6 moving it?

7 A. In front of the pallet jack.

8 Q. Well, when you say in front of it, you see the  
9 fellow pictured in this?

10 A. Correct.

11 Q. Is that what you're calling in front of it?

12 A. He's backing up.

13 Q. Okay. You don't push the pallet jack forward,  
14 though, do you?

15 A. No.

16 Q. You pull it and you walk along with it?

17 A. Correct.

18 Q. Did you have any training at Tyson with respect  
19 to operating pallet jacks?

20 A. Yes, sir.

21 Q. Can you tell the jury a little bit about that  
22 training?

23 A. I went to see a film, and I passed a written test  
24 on the film -- on the film we studied, and that was  
25 about it.



1 Q. Do you remember how long that film last?

2 A. About an hour and 15 minutes at the most.

3 Q. Did you say you took a test?

4 A. Yes, sir.

5 Q. How did you do on the test?

6 A. Done pretty high on the test.

7 Q. Did you ever have any of your supervisors come  
8 and tell you that there was any problem with the way you  
9 were operating pallet jacks in the past?

10 A. No, sir.

11 Q. Now, in the area where you were working -- and  
12 you called it the cooler?

13 A. Yeah, the cooler.

14 Q. Am I understanding that right?

15 A. Yes, sir.

16 Q. What -- how big is this cooler?

17 A. About as big as this courtroom.

18 Q. And what's stored in that cooler?

19 A. Live chickens and shipped -- the chicken getting  
20 ready to get shipped out.

21 Q. When you say "live chickens," they're not alive?

22 A. They whole bird chickens. They ain't live. They  
23 already been cleaned and everything, processed.

24 Q. About how many folks work in that department with  
25 you?

1       A. I say about five.

2       Q. How many pallet jacks are assigned to your cooler  
3 area in that department?

4       A. One.

5       Q. Now, let me go back to talking about how to  
6 operate this pallet jack a little more. How do you  
7 understand that you go about stopping a pallet jack, one  
8 of these motorized pallet jacks?

9       A. You let the handle up and -- you know, lock  
10 itself up, and it will cut the power jack off. It will  
11 stop, completely stop.

12      Q. Do you have to physically push the handle back up  
13 in place?

14      A. Yes, you do, or it will snap up by itself. When  
15 you let the handle go, it will snap automatic up.

16      Q. Is there some type of spring in there that  
17 springs it back?

18      A. Yeah. Yes, sir.

19      Q. And once that handle springs back up, what  
20 happens?

21      A. It will cut the machine off.

22      Q. Is there any neutral position on the pallet jack?

23      A. No, sir.

24      Q. Is there any key on the pallet jack when you  
25 normally operate it?

1       A. There's a key. The key never in there.

2       Q. Why not?

3       A. When they cut the jack on, somebody take the key  
4 out the jack. I don't know who done that, who -- who do  
5 that.

6       Q. Did you personally witness one of your co-workers  
7 being injured with the pallet jack -- a pallet jack?

8       A. Yes, I did.

9       Q. Can you tell us who that co-worker was?

10      A. Jose.

11      Q. Can you tell me when that was?

12      A. It was in 2007 before I did.

13      Q. Can you tell me what happened to Jose from what  
14 you saw?

15      A. He was putting the chicken up off the skid, and  
16 he got between the -- the other pallet -- between two  
17 pallets. He was pulling it in, and he was on his way  
18 out. When he got out, the jack hit him, pushed him  
19 against the other skid, and the jack ran over his foot,  
20 and it messed up his ankle.

21      Q. Do you know if that got reported at Tyson?

22      A. Yeah, he reported it.

23      Q. Do you know -- have any idea what happened with  
24 him reporting that?

25      A. I know he eventually went to the doctor. He was

1 on light duty.

2 Q. Did you -- did you ever personally have  
3 conversations with your supervisors about problems with  
4 pallet jacks?

5 A. Correct, I did.

6 Q. Can you tell me who you had a conversation with?

7 A. Patricia William.

8 Q. And can you tell me when that was in relation to  
9 your incident we're here to talk about?

10 A. Oh, couple weeks before I got hurt.

11 Q. And what did you tell Ms. Williams?

12 A. The jack didn't want to stop. It want to keep  
13 going. It kept -- keep going and was hitting against  
14 the line and slamming the chickens and stuff against the  
15 wall and knocking all the chickens on the floor.

16 Q. What part of the facility was that in?

17 A. The freezer, from my reconsation (sic).

18 Q. Was -- were you -- at the time, were you using  
19 the same pallet jack --

20 A. Correct.

21 Q. -- that's assigned to the freezer area?

22 A. Correct.

23 Q. Can you describe what the pallet jack was  
24 actually doing for the jury when you -- and what you  
25 told Ms. Williams the pallet jack was doing?

1       A. When you -- when you go up to get the skid for  
2 the chicken, about 25 tubs on the skid, it's kind of  
3 heavy. When you go get it and pick it up with a fork,  
4 still it's coming back toward you, it keep going and  
5 pushing up. It keep pushing up that line belt against  
6 the wall and knock the chicken on the floor.

7       Q. What --

8       A. It wouldn't ever stop.

9       Q. What did Ms. Williams tell you when you told her  
10 about this?

11      A. She wrote it up.

12      Q. Do you know what happened after that?

13      A. No. She said she was going to take care of it.  
14 She put it in a work pad, and she was doing -- she have  
15 a pad where you explain, she'll write it down the  
16 proceeding of that day. She'll check on it later on  
17 that day. I don't know what happened at that time.

18      Q. Do you know whether she ever checked up on it?

19      A. No, I don't.

20      Q. Had you heard about any other employees being  
21 injured while operating pallet jacks at the Tyson  
22 facility?

23                   MR. MAYER: Objection, Your Honor, calls for  
24 hearsay.

25                   THE COURT: Sustained.

1       Q.   (By Mr. Skrabanek)  What day did your incident  
2 occur, Mr. Blackshire?

3       A.   The 10th, the 26th of 2007.

4       Q.   October 26th; is that what you were saying?

5       A.   Yes, sir.

6       Q.   Tell me about what happened that morning when you  
7 started to work.

8       A.   Well, I went to work.  My job was to sign -- my  
9 job -- my regular job was stack off the freezer.  I went  
10 to -- worked all the way up to about second break.

11               Patricia came in, told me -- Jose was  
12 already on doctor release.  She didn't have nobody to  
13 operate the jack.  She wanted me on the jack.  I said,  
14 "Why?  This is my job.  I bid for this.  This is what I  
15 supposed to do."

16               She said, "If you don't get on the jack at  
17 the time that you -- you ain't following my order, and  
18 I'm going to have to write you up for disciplinary  
19 action on that."

20               And then I had to do -- use the jack because  
21 I didn't want get fired or whatever she was going to do  
22 to me.

23       Q.   Was the reason that you were having to operate  
24 the jack because Jose wasn't there?

25       A.   Jose was there.

1 Q. Was or wasn't there?

2 A. He was.

3 Q. Okay. Why wasn't Jose operating the pallet jack?

4 A. He was hurt.

5 Q. Was -- had he been -- do you know if he had been  
6 restricted from operating it at that point?

7 A. He was on light duty.

8 Q. So when Ms. Williams comes and tells you about  
9 moving the chicken, what do you do?

10 A. I start moving the chickens, doing my job I had  
11 to do that day.

12 Q. Was the pallet jack empty, or was it full of  
13 chickens at the point you started?

14 A. It was empty.

15 Q. So what did you do?

16 A. Loaded -- load my -- get the -- the skid that I  
17 have to load to move. I picked the skid up that I need  
18 to move the pallet. I need to move it immediately for  
19 the line to keep going, put it back -- back in the back,  
20 though I had a co-worker coming out.

21 Q. Okay. Any problem with the way you loaded up the  
22 chicken?

23 A. No.

24 Q. And did you pull the handle down to begin moving  
25 the pallet jack?

1       A. Yeah, correct.

2       Q. And you said something about a co-worker?

3       A. Yeah, it was a co-worker coming in. When I got  
4 my load, he was coming out with a load to load on the  
5 truck getting ready to get shipped out.

6       Q. What are you supposed to do when you see a  
7 co-worker unloading a truck?

8       A. Give him the right-of-way.

9       Q. Do you remember what co-worker that was?

10      A. No, I don't remember his name. He worked in the  
11 freezer department. The back dock -- he worked on the  
12 back dock.

13      Q. Can you kind of describe this area that you're in  
14 for the jury where he would be passing you?

15      A. It was in the room -- it's -- it's -- the freezer  
16 is about the size of this court, and I'm in the back of  
17 the corner of the court and the chicken is against that  
18 wall. And you got a little line to come out -- I have a  
19 line to put a chicken in order like 50s. He's coming  
20 out. I stop. When I stop, I let go of the handle of  
21 the -- the chicken set the handle up, and I had to let  
22 him through. I had to stop the jack to let him through.

23      Q. Okay. So when you stopped the jack, did you let  
24 go of the handle?

25      A. Yes, I did.



1 Q. What happened to the handle after you let go?

2 A. It's locked. It stayed there for a minute, and  
3 then I had to look back and see what I had to do for my  
4 next load, where it go, like I got 62 --

5 Q. Okay. Hold on, Mr. Blackshire. We're going to  
6 get there.

7 But when you let the handle go, did it pop  
8 back up or did it stay where it was?

9 A. It went up.

10 Q. Did the pallet jack stop, or did it continue to  
11 move?

12 A. It stopped.

13 Q. And how many -- did you step away from the pallet  
14 jack controls at that point?

15 A. Yes.

16 Q. About how -- how far away?

17 A. Four or five feet.

18 Q. And what did you do next?

19 A. Looked to my right.

20 Q. And why did you do that?

21 A. I have to look on my line to see where I get --  
22 the next chicken I got to get off the line for it  
23 won't -- for it won't -- they can keep stacking on the  
24 line.

25 Q. Did your co-worker ultimately pass you?

1       A. Yeah, he passed me.

2       Q. What's the next thing you remember happening?

3       A. When I looked over -- when I get hit, I turned  
4 back around, the jack, it was coming full speed. And  
5 when I looked back, it got me. And the co-worker that  
6 just passed me, he didn't get to make it through those  
7 two doors right there. He stopped and get the jack off  
8 of me.

9       Q. What position was the handle in when you turned  
10 your head back and saw the jack coming at you?

11      A. Down.

12      Q. Do you have any idea how it got down?

13      A. No, sir.

14      Q. Describe for the jury how the jack struck you.

15      A. Right in the front -- it struck me in the front  
16 of my -- where my hip bone at. And all the chicken that  
17 I had on it came with it, and it bent me on a big beam  
18 up in the ceiling against this concrete pole. It  
19 slapped me down and all that pressure was on me.

20      Q. Tell us where -- what the barrier looks like. Is  
21 it -- is it between poles in the hallway?

22      A. The barrier was straight up to the ceiling. It's  
23 a beam. And it cut off right there like that, and it's  
24 concrete. It was like that. It was concrete in the  
25 beam. It bent me between the beam and the concrete. I

1 was laying on top of the beam with all that -- with all  
2 that weight on me.

3 Q. So where was your lower body versus your upper  
4 body at this point?

5 A. On top off the concrete beam off the floor. My  
6 foot was off the floor.

7 Q. Describe for the jury what it felt like to be  
8 hit.

9 A. Like a car just ranned (sic) over me.

10 Q. Anything else you remember about -- did the horn  
11 go off, something like that?

12 A. The horn stuck about 15 minutes. My wind went  
13 out of my -- my stomach, knocked the wind completely out  
14 of me, and the horn was jammed, and it took them about  
15 five, six minutes to unjam -- the impact on the horn was  
16 so hard, it took them about 5, 15 minutes just to unstop  
17 the horn. And the gentlemen who were working --  
18 co-worker work with me, helped me get the jack off  
19 because I was pinned backwards. I was all the way back.

20 Q. Just on a side note real quick, were you in a  
21 union when you were at Tyson?

22 A. Yes, sir.

23 Q. Do you remember what local you were in?

24 A. 540.

25 Q. How long had you been a member of that union?

1       A. Ever since they came.

2       Q. What -- how did you get the pallet off you?

3       A. The gentlemen -- my co-worker got it off. I  
4 couldn't get it off. I was pinned. My -- my arms were  
5 pinned backwards behind me.

6       Q. And what co-workers helped you?

7       A. John Edmond, Jessica, and a guy who just -- the  
8 reason I had the jack -- I don't know his name, the guy  
9 who just passed me, he worked up at the dock. It took  
10 three men to get that jack off of me.

11      Q. Do you remember how long it took them to get the  
12 pallet jack off you?

13      A. I say about four minutes at the most.

14      Q. Did you report your incident to Tyson?

15      A. Yes, I did.

16      Q. What did you do after you reported it?

17      A. I reported -- I went to the emergency room. I  
18 reported it, and I went to finish my course up. I  
19 thought I wasn't going to make it. I went home, and my  
20 back just went out. And I got scared, and I said,  
21 "Well, something's wrong," and we go to the emergency  
22 room.

23      Q. Did you at all see Tyson's medic on the same --  
24 on the day of your injury?

25      A. Yes, sir.

1 Q. And is that medic's name Jessica Gatlin?

2 A. Yes, sir.

3 Q. What did she do for you?

4 A. She sent me to the doctor -- sent me to the  
5 doctor, gave me some paperwork to sign the first time,  
6 and -- and sent me to the doctor.

7 Q. I want to -- we're talking about the day of your  
8 injury now.

9 A. She said -- she sat down -- the first day she sat  
10 down, gave me some paperwork to see the doctor, though I  
11 didn't never get to go to the doctor or something.

12 Q. What day of the week was your incident on?

13 A. Friday.

14 Q. Were you going to try to tough it out over the  
15 weekend, see if you couldn't come back to work?

16 A. Correct.

17 Q. What happened on Saturday?

18 A. My back just went out. I couldn't get out of  
19 bed. I couldn't -- I couldn't feel nothing. I got kind  
20 of nervous about it.

21 Q. What did you do when that happened?

22 A. Went to the emergency room.

23 Q. Where at?

24 A. Carthage, Texas.

25 Q. What did they do for you?

1       A. They gave X-rays, gave me some pills, blood  
2       tested me, and told me to go back down to Tyson and tell  
3       them about the accident. I had already had done that,  
4       though.

5       Q. Did you go back to Tyson?

6       A. Yes, sir.

7       Q. Did you go back to Tyson on Monday?

8       A. Yes, sir.

9               MR. SKRABANEK: Mind if I step away from the  
10       podium and grab something, Your Honor?

11              THE COURT: That's fine.

12       Q. (By Mr. Skrabanek) Do you remember whether you  
13       went back to talk to Ms. Gatlin the next week?

14       A. I went that Monday, and I went back the next  
15       following week.

16       Q. Do you remember whether y'all filled out an  
17       incident report?

18       A. Yes, we did. Yes, we did.

19       Q. Does this look like the incident report that  
20       y'all talked about?

21       A. Yes, sir.

22       Q. Do you see No. 1, it says, "State exactly where  
23       the accident happened." Is that your handwriting below  
24       that?

25       A. No.

1       Q. You see No. 2 where it says, "Describe what you  
2       were doing when the accident happened." Is that your  
3       handwriting?

4       A. No.

5       Q. Do you see No. 3 where it says, "Describe fully  
6       how the accident happened." Is that your handwriting?

7       A. No, sir.

8       Q. Do you know whose handwriting that is?

9       A. Jessica.

10      Q. Was she helping you to fill out this accident  
11      report?

12      A. Yes, sir.

13      Q. Were you giving her information at that time to  
14      help her fill out that accident report?

15      A. I can't recall.

16      Q. You see where it says, "jack ran"?

17      A. Yes, sir.

18      Q. Did you tell Ms. Gatlin that the jack had ran?

19      A. Yeah, I told it all.

20      Q. Is that consistent with the story you've told  
21      here today?

22      A. Yes, sir.

23      Q. Did you ever tell Ms. Williams that you had  
24      pinned yourself up against the pole while operating the  
25      pallet jack?

1       A.  No, sir.

2       Q.  Did you ever tell Ms. Gatlin that you had pinned  
3       yourself up against the pole while operating the pallet  
4       jack?

5       A.  No, sir.

6       Q.  Now, did you -- you see down at the bottom here  
7       where there's a picture of a little man?

8       A.  Correct.

9       Q.  And there's some dots on that man?

10      A.  Correct.

11      Q.  Did someone ask you to fill -- put those marks on  
12      there?

13      A.  Yes, she had me to show where I was -- I was  
14      hurting at the moment.

15      Q.  Did you put those marks on there, or did  
16      Ms. Gatlin?

17      A.  Oh, I think I put the marks on there.

18      Q.  And why did you put the marks on there?

19      A.  To show her where I was hurting at.

20      Q.  And where were you hurting on that day?

21      A.  On my lower back and the front of my gut and my  
22      top right shoulder.

23      Q.  Now, in this -- when you -- the same day you  
24      filled out this accident report with Ms. Gatlin, did she  
25      hand you a stack of other documents?



1       A.   Correct.

2       Q.   Do you have any -- can you remember what those  
3 documents were?

4       A.   Not really.

5       Q.   Was there a list of doctors that y'all went  
6 through at all?

7       A.   She showed me a list of doctors to pick out,  
8 though she picked it out.

9       Q.   Do you remember which doctor she picked out?

10      A.   Dr. Nielsen.

11      Q.   Did you go see Dr. Nielsen?

12      A.   Yes, sir.

13      Q.   And what did he do for you?

14      A.   He -- he ran away (sic) my bones for a little and  
15 made sure I can flex a little bit. He sent me to a --  
16 he really couldn't tell me. He sent me to a spine  
17 specialist up in Shreveport.

18      Q.   Did he send you back to the Tyson office?

19      A.   Yes.

20      Q.   Do you know why?

21      A.   He had me going back to Tyson on light duties  
22 and, for my prescription, he show what kind of  
23 medication I was taking.

24      Q.   How was your back feeling at that point?

25      A.   Still hurting real bad.

1       Q. Did you go back and see Ms. Gatlin a third time?  
2       So you have the initial day of the injury, the next  
3       week, and now I'm talking about a third time. Did you  
4       go see her a third time?

5       A. Yeah, I went back to see her again.

6       Q. Did she have another stack of documents with her?

7       A. Yes, sir.

8       Q. Did she tell you what any of those documents  
9       meant?

10      A. She was trying to put me in a plan. I didn't  
11      understand the plan.

12      Q. Did they tell you -- I'm going to show you a  
13      document. Do you remember seeing that document?

14      A. No, sir.

15      Q. Do you understand what this document is as we sit  
16      here today?

17      A. No, sir.

18      Q. Did Ms. Gatlin attempt to explain to you anything  
19      in this document, what it meant?

20      A. No, sir.

21      Q. Did Ms. Gatlin tell you that you might want to  
22      get a lawyer on your side to take a look at this?

23      A. No, sir.

24      Q. Did anyone else at Tyson tell you you might want  
25      to get a lawyer to look at this?

1       A.  No, sir.

2       Q.  Did Ms. Gatlin explain to you anything about your  
3 legal rights when she handed you this document?

4       A.  No, sir.

5       Q.  Did -- and I'll just show you a second page.  
6 That's your signature at the bottom, though, right?

7       A.  Correct, sir.

8       Q.  So why did you sign it?

9       A.  She told me if I signed some paperwork, I can go  
10 straight to the doctor.  That's the only way I can be  
11 able to get some help to the doctor.

12      Q.  Did she ever tell you that if you signed the  
13 document, that you couldn't sue or bring a lawsuit  
14 against Tyson thereafter?

15      A.  No, sir.

16      Q.  Did your supervisor ever tell you that if you  
17 signed this document, that you couldn't bring a lawsuit  
18 thereafter?

19      A.  No, sir.

20      Q.  Anyone at Tyson tell you if you signed --

21      A.  No.

22      Q.  -- the document --

23      A.  No, sir.

24      Q.  Did you have knowledge of what the affect of this  
25 document would be on your legal rights when you signed

1 it?

2 A. No, sir.

3 Q. Now, you saw Tyson's doctor for a little while  
4 after this last meeting with Ms. Gatlin, correct?

5 A. Correct.

6 Q. And, ultimately, you and Tyson parted ways at  
7 some point?

8 A. Correct.

9 Q. At that point, could you personally afford your  
10 own doctor to treat your back?

11 A. No, sir.

12 Q. Did Tyson's doctor recommend that you actually  
13 see a specialist?

14 A. The -- the Spine Institute in Louisiana did.

15 Q. And did you ever get to see that specialist?

16 A. No, sir.

17 Q. Did you start any kind of physical therapy while  
18 you were under the care of Tyson's doctor?

19 A. Yes, I did.

20 Q. Did you get to finish that physical therapy?

21 A. No, sir.

22 Q. What were you doing in between the time that you  
23 and Tyson parted ways and the next time you saw a  
24 doctor?

25 A. In pain.

1 Q. Were you trying to get through it?

2 A. I was trying to get through it. I was in pain.  
3 I couldn't really get no assistance -- to -- to get no  
4 assistance. I was calling Tyson trying to get my  
5 benefits, and the lady said I couldn't get the  
6 benefits.

7 Q. Did you ultimately see a doctor named Dr. Kenneth  
8 Lee?

9 A. Yes, I have.

10 Q. And, I mean, I referred you to him, right?

11 A. That's right.

12 Q. No secrets there. How do you like Dr. Lee's  
13 treatment?

14 A. Dr. Lee was fair, and he telling me what's --  
15 what was wrong with me, because I couldn't understand  
16 because I was in so much pain when I got to him, and he  
17 kind of scared me, told me I needed some shots. I ain't  
18 never had shots before in my life like the -- the way he  
19 was describing. I was kind of nervous. He calmed me  
20 down. I was still kind of nervous, though.

21 Q. Did you get those shots?

22 A. Yes, sir.

23 Q. Did they make you feel any better?

24 A. Yeah. For a little while, yes, sir.

25 Q. Did -- did he prescribe you any physical therapy?

1       A.   Yes, sir.

2       Q.   Did you do the physical therapy?

3       A.   Yes, sir.

4       Q.   Did you feel like you were getting benefit from  
5 the physical therapy?

6       A.   Yes, sir.

7       Q.   Did -- has Dr. Lee given you any kind of  
8 restrictions --

9       A.   Yes, sir.

10      Q.   -- on the ability of movement and things like  
11 that?

12      A.   Yes, sir.

13      Q.   What -- do you know what those are?

14      A.   Don't lift over 30 pounds.  I can't lift -- I  
15 know I can't lift over 30 pounds.  Can't lift over 30  
16 pounds.  Don't overstrain yourself trying to do  
17 something, you know, activity or stuff like that or  
18 trying to work real hard or something like that.

19      Q.   I noticed in meeting with you, that you have a  
20 little unit.  Can you hold that up?

21      A.   Yeah.

22      Q.   What is that?

23      A.   It's an electric shock treatment.  It -- it  
24 massages the lower part of my back most of the time.

25      Q.   Who prescribed that for you?

1       A. My therapy lady because she told me -- when I got  
2       there, she said I walk kind of funny. My walk ain't  
3       right, and -- and my -- my right side is -- is right --  
4       kind of right, and my left side is not right.

5       Q. How are you doing -- how is that unit helping you  
6       out?

7       A. A lot.

8       Q. How are you doing just on a day-to-day basis as  
9       we sit here today?

10      A. I be in pain. I be in pain.

11      Q. Have you tried to work at all after you and Tyson  
12      parted ways?

13      A. Yes, sir.

14      Q. Where did you work at?

15      A. The government helped me out getting a job to  
16      get -- a kind of flag -- temporary job -- helped them  
17      flag on traffic on the freeway.

18      Q. Were you able to complete that temporary  
19      assignment?

20      A. Yeah, I did, but I couldn't really just work  
21      there.

22                   MR. SKRABANEK: Pass the witness, Your  
23      Honor.

24                   MR. MAYER: Cross examination, Your Honor?

25                   THE COURT: Yes, please.

1 CROSS EXAMINATION

2 BY MR. MAYER:

3 Q. Mr. Blackshire, my name is Zach Mayer. You and  
4 I -- you and I have met in the past, true?

5 A. Correct.

6 Q. All right. I'm going to be asking you a few  
7 questions. Can you -- can you listen to my questions  
8 and let me know if you don't understand them, okay?

9 A. Correct.

10 Q. Mr. Blackshire, what I'd like to do first of all  
11 is talk about the training that you received while you  
12 worked at Tyson, okay?

13 A. Correct.

14 Q. I understand that you worked there on several  
15 different occasions in the past few years, basically  
16 from 2002 until 2007?

17 A. 2002 to 2007, that's correct.

18 Q. There were a few times in there that you left the  
19 employment, but you came back after a break?

20 A. Correct.

21 Q. And during those approximately five years, you  
22 worked in different departments?

23 A. Correct.

24 Q. And whenever you would start a new job in a  
25 different department, would you receive training from



1 Tyson?

2 A. Correct.

3 Q. In other words, when you went from marination to  
4 stack off, they -- they taught you how to complete your  
5 job duties to do stack off?

6 A. Correct.

7 Q. And isn't it true that while you worked for  
8 Tyson, you felt like you were properly trained?

9 A. Correct.

10 Q. Let's talk about the pallet jack specifically.  
11 You said that you went through a class, right?

12 A. That's correct.

13 Q. And the class lasted about an hour and a half?

14 A. Yeah, hour and 15 minutes.

15 Q. During the class, you were provided some written  
16 material, weren't you?

17 A. A test.

18 Q. Yeah. You were provided some written material  
19 that you reviewed, and then after reviewing the written  
20 material, you took a test, right?

21 A. Correct.

22 Q. You also watched a video?

23 A. Correct.

24 Q. And there was an instructor there who was going  
25 through the written material and also was there to show

1     you the video?

2         A.   Correct, Ms. Cheryl.

3         Q.   I'm sorry?

4         A.   Ms. Cheryl.

5         Q.   Ms. Cheryl.  And while you were going through the  
6     training on the pallet jack, did you also see the Tyson  
7     operator handbook?

8         A.   That right there?  I didn't see that.

9         Q.   They -- did they go over written material with  
10    you during the class?

11        A.   Yeah, they did.

12        Q.   All right.  And then afterwards, once they went  
13    through the written material and once -- once they went  
14    through the video, did you take a test?

15        A.   Yes, sir.

16        Q.   Was the test in writing?

17        A.   Yes, sir.

18        Q.   You actually said that from your counsel you did  
19    a good job on that test?

20        A.   Yes, sir.

21        Q.   You passed it?

22        A.   Yes, sir.

23        Q.   So in order to pass the test, you had -- you had  
24    to read the test?

25        A.   Yes, sir.

1 Q. Had to understand the questions?

2 A. Yes, sir.

3 Q. And then you filled out -- was it a multiple  
4 choice quest -- questions?

5 A. I don't remember no math on there.

6 Q. No, no. Like A, B, C, and you had to circle  
7 different answers?

8 A. I think so, correct.

9 Q. And then once you were done, you passed that test  
10 and you got a certification from Tyson to operate the  
11 pallet jack?

12 A. Correct.

13 Q. And then you went out onto the floor and you  
14 actually operated the pallet jack on the floor?

15 A. No.

16 Q. Did you use the pallet jack in your job?

17 A. Yeah, I used the pallet jack on my job.

18 Q. And when you were using it on the floor, did  
19 someone watch you, your supervisor?

20 A. No.

21 Q. Did you ever have a supervisor by the name of  
22 Patricia Williams?

23 A. Patricia Williams, yes, sir, I did.

24 Q. And Ms. Williams was your supervisor on the day  
25 in question, right? October 26th, two thousand --

1       A. Not in class -- not -- not in -- in that  
2 training.

3       Q. No, no, I understand. After you completed the  
4 training --

5       A. Uh-huh.

6       Q. -- you got a certification?

7       A. Correct.

8       Q. And once you got that certification, you were  
9 then able to go out and operate the pallet jack in your  
10 job?

11      A. Correct.

12      Q. And then you would -- you would actually operate  
13 the pallet jack to move product around the plant?

14      A. Correct. It wasn't my job, though.

15      Q. Right. On October 26th, 2007, was Ms. Williams  
16 your supervisor that day?

17      A. Say it again.

18      Q. On October 26th, the day that you were injured,  
19 was Ms. Williams your supervisor?

20      A. Yes, she was.

21      Q. All right. And you understand that that day  
22 they -- they were short one pallet jack operator?

23      A. No, they wasn't. Jose was there. He was there.  
24 They had a guy there. They weren't short.

25      Q. Okay. But Mr. -- but Jose was not operating the

1     pallet jack that day, true?

2           A.   That's correct.

3           Q.   And Ms. Williams asked you to operate the pallet  
4     jack?

5           A.   Correct.

6           Q.   And by that point in time, you had already  
7     completed your certification?

8           A.   Correct.

9           Q.   So you were certified to operate the pallet jack?

10          A.   Correct.

11          Q.   Did you feel like you could operate it  
12     comfortably?

13          A.   Well, I was telling them about the jack because  
14     it was already hurting peoples --

15          Q.   Well --

16          A.   -- the jack.

17          Q.   Did -- did you ever tell Ms. Williams anything  
18     about your hesitancy to use the jack?

19          A.   Yes, I did.

20          Q.   Okay.  Let me ask you this, on October 26th when  
21     she asked you to use the jack that day, did you inspect  
22     the jack before using it?

23          A.   No.

24          Q.   You never looked it over?

25          A.   No.

1       Q.   Okay.  You just started using it to move product  
2   over by the cooler?

3       A.   I didn't inspect the jack that day.  The jack --  
4   the inspections on the jacks start in the morning.

5       Q.   But this was the first time you were using the  
6   jack that day, wasn't it?

7       A.   Correct.

8       Q.   All right.  So before you used it, did you  
9   inspect it?

10      A.   Oh, I checked it.  I made sure it stopped and  
11   everything, yeah, correct.

12      Q.   And you didn't find any problems with it at that  
13   point?

14      A.   Correct.

15      Q.   Then you're moving the product over by the cooler  
16   you said, right?

17      A.   Yes, sir.

18      Q.   And you see another person coming out, and you  
19   stopped and waited?

20      A.   Correct.

21      Q.   Did you stand to the side of the pallet jack?

22      A.   No, sir.

23      Q.   Do you remember in your training when they showed  
24   you the different training material that one of the  
25   things they trained you on was to walk to one side of

1 the pallet jack?

2 A. That's when you're moving the freight.

3 Q. And you're saying that you let go and stepped  
4 away from --

5 MR. SKRABANEK: Your Honor, objection. May  
6 I approach?

7 THE COURT: Yes.

8 (Bench conference.)

9 MR. SKRABANEK: Object to relevance here,  
10 Your Honor, because it's going to contributory  
11 negligence which is --

12 MR. MAYER: He's saying that the proximate  
13 cause was --

14 THE COURT: Well, he's going -- it goes to  
15 causation. We're not going to submit -- you know, we're  
16 going to submit the questions of proximate cause. It  
17 goes to causation.

18 MR. SKRABANEK: Okay.

19 THE COURT: We're not going to submit  
20 negligence.

21 MR. SKRABANEK: Thank you, Your Honor.

22 THE COURT: Okay. Overruled.

23 (Bench conference concluded.)

24 THE COURT: Let's proceed.

25 Q. (By Mr. Mayer) So, Mr. Blackshire, did you step

1 to one side of the pallet jack before what you claim it  
2 became out of control and hit you?

3 A. No, I stopped the jack and walked back from the  
4 jack.

5 Q. And you said you were four or five feet away from  
6 the pallet jack?

7 A. Correct.

8 Q. And you said that you turned to your right and  
9 then suddenly the jack came at you?

10 A. Correct.

11 Q. Now, you talked about this injury with Jose,  
12 right? This other individual who you said was injured  
13 while using a pallet jack?

14 A. He was hurt -- he was in the front. He was  
15 somewhere else in another department.

16 Q. When -- when he was hurt, his foot got run over,  
17 right?

18 A. Correct.

19 Q. Okay. And were you by him when that occurred?

20 A. I was like at the end of the line at the -- at  
21 the time on the shift.

22 Q. So -- so the incident occurs on one side of the  
23 line and you're on the other side of the line?

24 A. We was -- we was in the cooler -- open space like  
25 this right here.



1       Q. The line is actually even bigger than this room,  
2 isn't it?

3       A. No.

4       Q. About the size of this room?

5       A. No.

6       Q. How big is the line?

7       A. From right here to where -- that gentleman in the  
8 coat right there.

9       Q. All right. And then there's -- are there other  
10 lines in the plant, as well?

11      A. There's one right here where the Judge at --  
12 coming off to that desk right there. That's just for  
13 the KFC. There's two lines in there. They ain't long.  
14 They're short lines.

15      Q. And what you're saying, you were at one side of  
16 the line when Jose was -- hits foot was run over by the  
17 pallet jack on the other side of the line?

18      A. No, no. Jose in the freezer. This is a freezer.  
19 This is an open freezer.

20      Q. Okay.

21      A. The line on this wall, and Jose was right down  
22 here where this lady in the black jacket -- right there.

23      Q. All right.

24      A. And I'm at the end of the line.

25      Q. He was over by the freezer?

1       A. Yeah, because we have to move the -- no, we in  
2       the freezer. This is -- this court would be the  
3       freezer. The whole court is just a big walk-in freezer.

4       Q. Okay.

5       A. And Jose was right there where that lady with the  
6       black -- the blue jacket on, and I'm at the end, and  
7       he's got to come get these head quarters -- these front  
8       half off right here. That's why I look down there.  
9       When I look down there, I seen -- boom.

10      Q. And he ran over his foot?

11      A. Yeah.

12      Q. Okay. Now, when Ms. Williams asked you to  
13      operate the pallet jack that day, I'm understanding you  
14      to say that you were able to take it from Point A to  
15      Point B without any problems?

16      A. No problem.

17      Q. And then you said you let go of the handle, and  
18      it went up into the locking position?

19      A. Correct.

20      Q. And you stepped away from it, and all a sudden it  
21      accelerates on its own?

22      A. Correct.

23      Q. And it comes towards you?

24      A. Correct.

25      Q. And it's your testimony to this jury that you

1 told Ms. Williams that?

2 A. I told Ms. Williams what happened. She knows  
3 what happened.

4 Q. No, no, sir. Did you tell Ms. Williams that you  
5 had stepped away from the jack and that it accelerated  
6 on its own and pinned you?

7 A. I couldn't talk when Ms. Williams came up. I  
8 couldn't talk when Ms. Williams came up because I ain't  
9 have no wind. I told her when I went to the nurse  
10 station what happened.

11 Q. All right. And it's your testimony that you told  
12 her that you were four or five feet away from the jack,  
13 and it accelerated on its own, and it pinned you?

14 A. Correct.

15 Q. And then after that, you were sent to the nurse,  
16 also, right?

17 A. She went to the nurse with me.

18 Q. And when you were in the nurse's station, did you  
19 talk with Ms. Gatlin?

20 A. Yes, I did.

21 Q. Ms. Gatlin is the plant nurse?

22 A. Yes, sir.

23 Q. And is it your testimony that you told  
24 Ms. Plant -- Ms. Gatlin the same thing, that this pallet  
25 jack accelerated while you were four or five feet away?

1       A.   Correct, I did.

2       Q.   Now, also in this process, you also completed an  
3 injury report form, right?

4       A.   Correct.

5       Q.   We just looked at that injury report form. Now,  
6 to begin with, on this injury report form, there's a  
7 signature at the bottom. Do you see that?

8       A.   Yes, sir.

9       Q.   Is that your signature?

10      A.   Yes, sir.

11      Q.   And directly above your signature it says  
12 there -- read along with me. "By my signature below, I  
13 hereby declare under penalty of perjury that the above  
14 responses are mine, true, correct and complete, and made  
15 of my own free will." Do you see that?

16      A.   Okay. That's correct.

17      Q.   And you read that with me?

18      A.   On that -- on -- by the yellow, yeah.

19      Q.   All right. And then you signed that document  
20 below it, didn't you?

21      A.   Yes, sir.

22      Q.   Okay. Looking up above, Question No. 2 says,  
23 "Describe what you were doing when the accident  
24 happened." What's your response there?

25      A.   I told the nurse. I didn't read that. She wrote

1 that.

2 Q. I understand, sir. You signed the document,  
3 didn't you?

4           A.   Yes, sir.

5 Q. And you reviewed the document before you signed  
6 it, didn't you?

7       A. Well, I -- I didn't -- at the time, I couldn't  
8       because I was in pain.

9 Q. Sir, are you telling the members of the jury  
10 that you did not review this document before you signed  
11 it?

12           A. The nurse was writing what happened down on the  
13 paper.

14 Q. My question is very specific.

15            A.    No .

16 Q. Did you review this document --

17            A.    No.

18 Q. -- before signing it?

19                      A.      No.

20 Q. Sir, you understand that I had the opportunity to  
21 take your deposition in this case, right?

22           A.   Correct.

23 Q. And I asked you a bunch of questions, true?

24      A.    Correct.

25 MR. MAYER: May I approach, Your Honor?

1 THE COURT: Yes.

2 Q. (By Mr. Mayer) And we talked about this  
3 document, didn't we?

4 MR. SKRABANEK: What page are you on?

5 MR. MAYER: Yeah, Page 63, Line 24.

6 May I approach, Your Honor?

7 THE COURT: Yes.

8 Q. (By Mr. Mayer) During your deposition, we had an  
9 opportunity to speak about this document, didn't we?

10 A. I think so.

11 Q. All right. And I asked you on there -- I said,  
12 "Now, you see where you -- you signed it there. Is that  
13 your signature?" And what's your response?

14 A. I signed it.

15 Q. That's your signature at the bottom. Then I  
16 asked you, "Did you look over the report before you  
17 signed it?"

18 And what did you say there? "Yes, I did,"  
19 right.

20 A. Yeah, I -- I think I did.

21 Q. And then -- and then I asked you, "And by signing  
22 it, you said that it was accurate?"

23 And your response is, "Accurate," true.

24 A. I don't remember that.

25 Q. You don't remember me taking your deposition in

1     this case?

2         A. I remember the deposition.

3         Q. You just don't remember telling me at that time  
4     that you reviewed the document to make sure it was  
5     accurate?

6         A. I don't -- I remember seeing that paper.

7         Q. You don't remember seeing the paper?

8         A. I remember seeing that paper.

9         Q. All right. And -- and before you signed it, you  
10    reviewed it to make sure that it was accurate?

11        A. No, I -- I'm saying I did because the nurse was  
12    writing it --

13                THE COURT: Counselor, we've been over this  
14    several times, and you read his -- you know, the rules  
15    of the game are that you're supposed to confront him  
16    with what he testified to. You never asked him, "Did  
17    you say that you looked over the document?"

18                Now, looking over the document and reviewing  
19    the documents are two different things. So now I'm  
20    instructing you, if you're going to try to impeach him  
21    with the deposition, you ask him the question you asked  
22    him in the deposition. That's improper impeachment.  
23    You said you read the question to him, did he look over  
24    the document, correct?

25                MR. MAYER: Yes, Your Honor.

1                   THE COURT: All right. What -- that was the  
2 proper question to ask him before you showed him the  
3 deposition. Let's move on now.

4                   MR. MAYER: Yes, Your Honor.

5           Q. (By Mr. Mayer) Now, let's look at the  
6 description, if we can here, of how the incident  
7 occurred. No. 3, do you see that?

8           A. No. 3?

9           Q. Where it says, "Describe fully how the accident  
10 happened." Do you see where I'm reading there? Can you  
11 not see? There we go.

12          A. Right. That was -- the nurse -- the nurse wrote  
13 that.

14          Q. Okay. I understand. And can we read it to the  
15 jury? I want to see if you -- if you agree with this.  
16 "Driving jack, backing up against pole and jack ran and  
17 pinned him against the pole." Did I read that  
18 accurately?

19          A. On the paper you did, but it ain't what I said.

20          Q. All right. So it's your testimony you did not  
21 tell Ms. Gatlin that description?

22          A. I told Ms. Gatlin what happened.

23          Q. But it's different than what she wrote?

24          A. She wrote down, correct.

25          Q. Now, after you went in and talked to Ms. Gatlin,



1     you then went to the emergency room on Sunday night  
2     which was --

3         A.   Saturday.

4         Q.   -- Saturday, October 28th?

5         A.   That Saturday.

6         Q.   And when you went there, I understand that you've  
7     got high blood pressure?

8         A.   Yes, I do.

9         Q.   Was your blood pressure high that evening?

10        A.   No.   They gave me a drug test when I first went  
11   there.

12        Q.   A drug test?

13        A.   Yes, sir.

14        Q.   Okay.   And then they gave you some pain medicine?

15        A.   Correct.

16        Q.   And then they told you to follow back up with  
17   Tyson?

18        A.   Correct.

19        Q.   Now, did you follow back up with Tyson?

20        A.   Correct.

21        Q.   And did Tyson eventually then send you to go see  
22   Dr. Nielsen?

23        A.   Yes, sir.

24        Q.   And did Dr. Nielsen do some treatment for you?

25        A.   Yes, sir.

1       Q. And then did Dr. Nielsen refer you to a  
2 specialist, Dr. Kerr?

3       A. Yes, sir.

4       Q. And Dr. Kerr was the Spine Institute of  
5 Louisiana?

6       A. That's correct.

7       Q. And while you were under the treatment of  
8 Dr. Kerr, you also went through physical therapy?

9       A. Physical therapy -- yeah, correct. Correct.

10      Q. Did you find that the physical therapy helped?

11      A. No, not at the time, no, because it was  
12 aggravating me.

13      Q. It didn't help you at the time?

14      A. No, sir.

15      Q. Did you feel that Dr. Kerr's treatment was  
16 helpful?

17      A. Dr. Kerr was -- he -- he told me I needed to see  
18 a specialist.

19      Q. All right.

20      A. That's all I remember. That's been awhile back.

21      Q. When you went -- I understand. It's been three  
22 years now.

23      A. Yeah.

24      Q. When you went to the emergency room, you went to  
25 see Dr. Nielsen and you went to see Dr. Kerr. Did Tyson

1 pay for all of that?

2 A. I don't know.

3 Q. Have you ever paid for it?

4 A. No.

5 Q. So if the evidence in this case is that Tyson  
6 paid for it, you don't know otherwise?

7 A. I don't know about that.

8 Q. Now, let's talk about the next visit that you  
9 went in with Jessica Gatlin where you talked about  
10 getting benefits under the Worker Injury Settlement  
11 Program. Do you remember going in and speaking with  
12 Ms. Gatlin about the WISP program?

13 A. No. She was -- talked to me about it.

14 Q. Do you remember when she was speaking with you  
15 about it?

16 A. Correct.

17 Q. Do you remember her telling you that there is a  
18 program in place at Tyson that if -- if you accept the  
19 benefits, that is, the medical payments and going to see  
20 Tyson's doctor, that you can't sue them then?

21 A. No, she didn't say it like that.

22 Q. Okay. You don't remember having that  
23 conversation?

24 A. No.

25 Q. Do you recall signing the WISP waiver in this

1 case?

2 A. I can't -- I can't recall.

3 Q. You just don't remember one way or the other?

4 A. It's been -- it's been awhile. It's been too  
5 long for me.

6 Q. Okay. Do you recall Ms. Gatlin showing you a  
7 copy of the WISP waiver?

8 A. I can't really say. I -- I don't -- I can't  
9 really say. I got to see it.

10 Q. Well --

11 A. I know she had a lot of documents. That's all I  
12 can tell you at the time she wanted me to sign. And she  
13 told me to -- to sign it -- to sign the document -- I  
14 have to sign the document to get to a doctor. That's  
15 what she told me.

16 Q. I -- I'm going to show you what's been marked as  
17 Defendant's Exhibit No. 15. Up top it's Exhibit A. It  
18 says, "Tyson's workplace injury settlement program." Do  
19 you see that up top?

20 A. Yeah, I see it.

21 Q. All right.

22 A. I see it.

23 Q. And then on the back of this document when it was  
24 presented, it's a one page, but we've got two pages  
25 copied. My question is, is that a copy or is that a --

1 your signature on the back of this document?

2 A. It looks like it.

3 Q. Now, were you given the opportunity to review  
4 this document before you signed it?

5 A. I don't -- I don't -- I don't -- I don't believe  
6 so.

7 Q. Are you saying that Ms. Gatlin wouldn't have  
8 given you the chance to review the document before you  
9 signed it?

10 A. I ain't never seen the document. She -- I don't  
11 think she told me to sign this last paper before I can  
12 go to the doctor.

13 Q. Okay.

14 A. That's it.

15 Q. You just don't remember seeing the document  
16 itself?

17 A. No.

18 Q. When you signed this document at the bottom,  
19 which we just looked at, did you read the first page?

20 A. Like I said, I didn't never have the papers in my  
21 hand.

22 Q. I guess I'm confused, sir. When you signed the  
23 document, did you review it before signing it?

24 A. No, sir.

25 Q. And it's your testimony that Ms. Gatlin did not

1 describe for you the effects of signing that document?

2 A. Well, she told me I had to sign this paperwork to  
3 go to the doctor, and I was in pain. That's why I did,  
4 to get assistance for my back.

5 Q. Okay. Did you read the first paragraph where it  
6 says, "I understand that I must accept the rules and  
7 conditions of the program and waive my right to sue the  
8 company"?

9 MR. SKRABANEK: Object, Your Honor. This is  
10 getting argumentive in that he's already said he hadn't  
11 read the document.

12 THE COURT: Sustained.

13 Q. (By Mr. Mayer) Did you have any follow-up  
14 conversation with any human relations devel -- or  
15 manager there?

16 A. No, sir.

17 Q. Someone from HR?

18 A. No, sir.

19 Q. Is Jessica Gatlin the only person that you talked  
20 about signing the document?

21 A. I don't remember talking. I know she told me to  
22 sign the paper that I have to go sign to go see -- to  
23 get to the doctor. That's it.

24 Q. Mr. Blackshire, are you aware of a Maintenance  
25 Department at Tyson?

1       A. In the back of the plant, yes, sir.

2       Q. And at the Maintenance Department, is that where  
3 they fix different machinery, including the pallet  
4 jacks?

5       A. The pallet jacks have a room where they fits  
6 inside the plant.

7       Q. Okay. So a pallet jack has its own room?

8       A. They -- they use both of them if they want to.

9       Q. All right. Did you ever have an occasion to  
10 speak with anyone over at the Maintenance Department?

11      A. Well, the one in -- in the freezer I have. The  
12 one in the back of the cooler, I have talked to them --  
13 one of them.

14      Q. Is the Maintenance Department there for you if  
15 you ever have a problem with the pallet jack?

16      A. The one in the -- in the -- in the freezer might  
17 be, if they in there, depending if they ain't working.

18      Q. And that's where they work on the pallet jacks?

19      A. Yes, sir.

20               MR. MAYER: Your Honor, no further questions  
21 at this time. I pass the witness.

22               THE COURT: Any redirect?

23               MR. SKRABANEK: Just real short, Your Honor.

24                       REDIRECT EXAMINATION

25 BY MR. SKRABANEK:

1       Q. Mr. Blackshire, I kind of glossed over this when  
2 I was talking to you earlier. How's your home life  
3 today as we sit here today with regard to your injury?

4       A. Pitiful.

5       Q. Are you -- do you have a girlfriend?

6       A. Yeah.

7       Q. Does she have a couple of kids?

8       A. Yes, sir.

9       Q. And do y'all live together?

10      A. Yes, sir.

11      Q. And how -- how old are those children?

12      A. Four -- five and four.

13      Q. And are they active?

14      A. Yeah, they real active.

15      Q. Are you able to pick them up and play with them  
16 at all?

17      A. Not that much.

18      Q. Did you play any pick-up sports before this  
19 injury?

20      A. Yeah, basketball and stuff like that.

21      Q. Have you played any basketball since this?

22      A. No, sir.

23      Q. I understand that you also like to ride your  
24 four-wheeler around?

25      A. Yes, sir.



1 Q. Do you still have a four-wheeler?

2 A. No.

3 Q. Have you ridden a four-wheeler since this  
4 incident?

5 A. No, sir.

6 Q. I just want to give you one last opportunity to  
7 tell this jury how this has all affected your life.

8 A. Fixing to be married. I want to be married.  
9 Can't support my church like I need to be, you know,  
10 paying my tithe in church. My income -- I don't have no  
11 income. I couldn't get assistance when I need food  
12 stamps to eat. It's hard.

13 MR. SKRABANEK: No further questions, Your  
14 Honor.

15 MR. MAYER: Nothing further.

16 THE COURT: You may step down.

17 THE WITNESS: Uh-huh.

18 THE COURT: Who be your next witness?

19 MR. PIERCE: Your Honor, the plaintiff calls  
20 Jack Madeley.

21 (Witness sworn.)

22 THE COURT: Proceed.

23 JACK MADELEY,  
24 having first been duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. PIERCE:

2 Q. Good morning, Mr. Madeley. How are you?

3 A. Good afternoon.

4 Q. Yeah, good afternoon. Can I get you to introduce  
5 yourself to the jury?

6 A. My name is Jack Madeley. I'm a consulting safety  
7 engineer. I live in College Station. I have my own  
8 engineering firm, Madeley Safety Engineering  
9 Consultants.

10 I have a Bachelor of Science degree from Texas  
11 A&M and got that in 19 -- I guess 1975, and that was in  
12 industrial engineering with a specialty in industrial  
13 safety engineering. I have a Master of Science degree  
14 in safety engineering obtained in 1996, also from A&M.

15 I went to work for Marathon Oil Company in 1975  
16 in Anchorage, Alaska, in offshore production -- offshore  
17 and onshore production operations as division safety  
18 engineer and worked for them implementing safety  
19 programs, developing their policies, doing field  
20 inspections, train -- doing training for the field  
21 workers and doing some design work in safety engineering  
22 and fire protection.

23 I went to work -- was transferred with Marathon  
24 to the Gulf of Mexico, worked offshore there for about  
25 eight years as a safety engineer, part of the time as a

1 construction engineer. So I did design work, hired and  
2 pushed construction crews, welding crews, and did some  
3 of the designs.

4 I then went to work for a consulting firm in  
5 College Station. Well, I transferred to Shreveport and  
6 onshore operations for about three years in safety  
7 engineering. And I was also a crane operator/trainer --  
8 certified crane operator. I've operated a number of  
9 types of cranes offshore in the Gulf of Mexico on fixed  
10 platforms on -- and some cherry picker RT cranes -- they  
11 call them rough terrain. I've operated forklifts over  
12 the years, set up certification programs for various  
13 types of training for crane operators, forklift  
14 operators.

15 Went to work for Biotechnics as a risk -- as a  
16 risk management consulting firm in College Station.  
17 Worked with them for about a year. Then went to work  
18 for Nelson & Associates for about five or six years  
19 doing safety consulting, much what I do now. And  
20 started my own firm in 1996.

21 Q. I think you've eliminated half the questions I  
22 have for you.

23 Let -- let me ask you this, sir. Could you tell  
24 the jury, are there any professional licenses you hold?

25 A. I am a licensed and registered professional

1 engineer in the State of Texas, and I'm a board  
2 certified safety professional which is a national  
3 organization and certification by examination.

4 Q. And, sir, you've sat through part of the  
5 testimony this morning. You've heard us already talk to  
6 the jury a little bit about pallet jacks; is that right?

7 A. Yes.

8 Q. And have you had occasion in -- during the time  
9 that you've worked as an expert witness, to testify in  
10 cases involving pallet jacks?

11 A. Yes, I have.

12 Q. And, sir, I'm not sure if you mentioned this yet  
13 or not, but what -- what is OSHA?

14 A. OSHA is the federal safety organization. It  
15 stands for the Occupational Safety and Health  
16 Administration.

17 Q. And, sir, you -- you mentioned in your discussion  
18 with the jury a moment ago that you -- you have  
19 experience in operating and in writing policies about  
20 forklift operation; is that right?

21 A. Yes.

22 Q. And are there sections of OSHA that apply to  
23 forklift operation?

24 A. Yes, there are. Under the general industry  
25 standards, Section 178 addresses forklifts. It also

1 has -- deals with what they call motorized pallets and  
2 motorized hand trucks which would be what we call pallet  
3 jacks.

4 Q. And, sir, that's what I was going to ask you.  
5 Those same standards that you were talking about under  
6 OSHA applying to forklifts, would they also apply to  
7 motorized pallet jacks?

8 A. Yes. It specifically states that in the  
9 description section of the standards.

10 Q. And, Mr. Madeley, in your professional  
11 experience, have you had to deal with those OSHA  
12 standards?

13 A. Yes. As a safety engineer, all -- any safety  
14 program should be very familiar with all of the OSHA  
15 standards because they are federal safety laws that's  
16 the regulations that the federal government requires for  
17 all construction -- all work sites where there's more  
18 than I believe 15 employees.

19 And the government does its best to set  
20 forth a number of regulations to help -- help keep  
21 people from getting hurt or killed on the job. They  
22 don't cover everything, but they cover most things and  
23 certainly they do address the specifics of pallet jacks.

24 Q. And, Mr. Madeley, in -- can you tell the jury on  
25 how many occasions you have been asked to offer expert

1 opinions in cases involving pallet jacks?

2 A. I don't really keep track of them like that, but  
3 probably 8 or 10 different cases over the last 10 to 15  
4 years.

5 Q. And, Mr. Madeley, in any of those cases, have  
6 your opinions either been excluded or limited by courts?

7 A. No.

8 MR. PIERCE: Your Honor, at this time, we  
9 would tender Mr. Madeley as an expert in workplace  
10 safety and also in the OSHA regulations applicable to  
11 the operation of pallet jacks.

12 THE COURT: We'll allow him to give his  
13 opinion.

14 Q. (By Mr. Pierce) Mr. Madeley, I want to -- I want  
15 to kind of jump in. I'm going to show you a couple of  
16 pictures. Sir, I'm not sure -- are you able to make  
17 that out?

18 A. Yes.

19 Q. Okay. Tell us what that is.

20 A. It's a silhouette of a pallet jack.

21 Q. And just for the record, so we can identify it,  
22 this is Page 1 of Plaintiff's Exhibit 18.

23 Mr. Madeley, what -- what are these types of  
24 devices used for.

25 A. They are used to assist employees in moving

1 palletized materials. A lot times, depending on the  
2 nature of the warehouse and so forth, you may use a  
3 forklift, you may use a -- what -- a pallet jack, or you  
4 may use a manual version of this where somebody -- you  
5 think you've heard -- referred to earlier a hydraulic  
6 one where you actually pump it up like a car jack-type  
7 thing.

8                   And it actually -- it's got the forks on it.  
9 It raises the pallet up, and then you manually tow it.  
10 This is a motorized one or powered one so that you can  
11 move heavier things without slipping on the floor and  
12 having to push it into unusual areas where you might get  
13 injured by pushing or pulling a heavy weight. It's got  
14 a motor on it, and so by dialing forward and  
15 backwards --

16       Q. Let me interrupt you, actually. I'm going to --  
17 as you're going through this, I'm going to put up  
18 another picture. This is Plaintiff's Exhibit 18, Page  
19 2. We're going to talk about the controls.

20                   Sir, what -- what's this a picture of?

21       A. This is the hand control on that lever or arm  
22 sticking out at the back of the other picture, and this  
23 is how you actually -- you kind of -- you move it from  
24 side to side to steer it, and then you've got a -- the  
25 two grips on it, you can dial it forward or backward to

1 go -- to move it forward or in the reverse direction.

2           And it's also got two controls for raising  
3 and lowering the -- the forks themselves because  
4 normally you don't really need to move the pallets very  
5 far vertically. This is not like a forklift where  
6 you're trying to pick something up or put something on a  
7 shelf way high. That's where you use a different  
8 device. This is just for a pallet that's on the floor.  
9 It's stacked. It's heavy. And you just need to raise  
10 it just enough so that you can move it around.

11       Q. Okay. Now, Mr. Madeley, I'm going to show you  
12 another document that was previously admitted. This is  
13 from Exhibit 18 -- Plaintiff's Exhibit 18, Page No. 3.

14           Now, just a second ago, you were talking to us  
15 about the throttle operations and some of the other  
16 things. Can you tell us what's depicted in this  
17 picture?

18       A. This is the range of motion of the control handle  
19 itself that sticks out. The operator would grab the end  
20 of it out here, and then if you -- if it's going to be  
21 up at a slight angle, so -- so you can dial it. It  
22 says, "Operating position with the brake off." And if  
23 he pushes it all the way down to horizontal, it will  
24 stop with the brake on, or if you turn it loose, it's  
25 like what we call a dead man control.



1                   If you accidentally slip and fall and the  
2     thing is moving, you don't want it to run over you, so  
3     it's got a spring load on it. It flops back and stops  
4     it. So if you do happen to slip on the floor, the  
5     machine doesn't run over you. And so that's the  
6     position it would be with -- if you turn loose of the  
7     handle.

8         Q. And, Mr. Madeley, just to point this out for the  
9     folks on the jury, the documents you and I have been  
10    looking at come from a broader document that's called  
11    the operator's handbook; is that right?

12        A. Yes, it is.

13        Q. Okay. Now, you referenced something -- I'm going  
14    to show you -- this is Plaintiff's Exhibit 19, Document  
15    No. 15. It's got some bad highlighting on it, but I'm  
16    going to talk to you about a different portion of it.  
17    There are two things I put boxes around, sir. The first  
18    thing is identifying the document. What's that document  
19    identified as?

20        A. This is the instructor's guide for -- and I  
21    believe it's the Tyson training program for pallet jack  
22    operators.

23        Q. Okay. And then we -- let's see how you --  
24    there's a section here that I put a block around.  
25    You -- you made a reference to the handle being spring

1 loaded; is that right?

2 A. Yes.

3 Q. Okay. And what's being described there?

4 A. This is a description of that. It says that the  
5 control arm is spring loaded. Releasing it allows it to  
6 swing up to the stop position.

7 Q. And -- and, sir, just based on your experience  
8 with pallet jacks and in dealing with other cases  
9 involving pallet jacks, what's -- what's the practical  
10 reason that you would have this arm be spring-loaded?

11 A. It is basically as -- like I said, it's -- we  
12 call it a dead man switch. If for some reason you lose  
13 control, all you have to do is literally nothing. Turn  
14 it loose. It will stop on its own. It's a safety  
15 feature.

16 Q. And, sir, just to make sure I've got this. If  
17 I'm -- if I'm operating the pallet jack -- if I'm the  
18 operator, based on what we've seen in these different  
19 manuals, if I let the handle go, this thing ought to  
20 stop?

21 A. Yes.

22 Q. Okay. Is there --

23 A. Assuming it's adjusted and not malfunctioning.

24 Q. Okay. Is there anything -- and let me just ask  
25 the question this way. In these documents that you and

1 I have gone through, if I'm the pallet jack operator and  
2 I let this arm go, is there anything to indicate to me  
3 or is there anything to make me suspect that this thing  
4 is going to keep moving?

5 A. No.

6 Q. Now, sir, you -- you were actually retained by my  
7 law firm in this case; is that correct?

8 A. Yes.

9 Q. And you and I have worked together on cases  
10 before; is that right?

11 A. Yes.

12 Q. Okay. Anything about the fact that you and I  
13 have worked together before that makes you give me a  
14 different opinion than you give somebody else?

15 A. No. I've given you good news, and I've given you  
16 bad news in the past, so --

17 Q. I was going to say, it seems like you've given me  
18 more bad news than good news.

19 What were you asked to do in this case?

20 A. I was asked to evaluate the -- the various  
21 documents. Initially, I think I wrote a report. I  
22 didn't have any documents. Depositions had not been  
23 taken. I had not seen a number of documents that I had  
24 seen later.

25 I have reviewed Mr. -- or Mr. Blackshire's

1 deposition. I've reviewed depositions of Mr. Howard, a  
2 Ms. Williams, and I believe the plant nurse. And I've  
3 looked at the instruction manuals, the training manuals  
4 for the -- for the pallet jack. I've seen  
5 Mr. Blackshire's personnel file which had the accident  
6 report in it that you've seen already.

7 Q. Let me -- let me ask you -- let's start off with  
8 just Mr. Blackshire. Based on what you've reviewed from  
9 him, what's your understanding of how he claims this  
10 accident occurred?

11 A. As I understand it, the way he described it, he  
12 is walking with the unit -- with the pallet raised  
13 slightly going to a different part of the plant, and he  
14 has to stop to allow someone to exit the freezer or the  
15 cooler area, and he released the handle. He watched it  
16 go up to the up position, and I think he stepped away so  
17 that he could -- he wanted to kind of get a better view  
18 of some -- what he was going to do next.

19 There's several different things, you know,  
20 where you're trying to plan ahead for after I deliver  
21 this, I've got to go somewhere else. And at -- when he  
22 went to turn back to -- through the pallet jack, he said  
23 that it was coming towards him. And at that point, he  
24 couldn't get out of the way, and it pinned him up  
25 against a -- a column.

1       Q. And, sir, you also -- you referenced another  
2 document that you reviewed as part of his file. It's  
3 Plaintiff's Exhibit No. 20. And let me -- I'll -- I'll  
4 zoom it out and see if you can identify this for us.

5       Mr. Madeley, have you seen that document before?

6       A. Yes, I have.

7       Q. What is that document?

8       A. That is the injury or accident report that we've  
9 been discussing today.

10      Q. Okay. And I'm going to try and zoom in on a  
11 portion of this. And, specifically, I want to talk to  
12 you about this one, about item No. 3. Do you see that?

13      A. Yes.

14      Q. Mr. Madeley, can you -- can you read the  
15 description that's recorded there under Item No. 3 on  
16 Tyson's accident report?

17      A. It says, "Driving jack, backing up against pole,  
18 and jack ran and pinned him up against," something,  
19 "pole."

20      Q. Okay. Now, sir, but my -- my co-counsel,  
21 Mr. Skrabanek, used this same document a minute ago, and  
22 he -- he highlighted these words "jack ran." Do you see  
23 that?

24      A. Yes.

25      Q. And, Mr. Madeley, what's the significance to you

1 of the description provided where you're saying that the  
2 jack ran?

3 A. It implies that the jack -- he didn't say, "I --  
4 I ran the jack," or "he ran the jack." You know, the  
5 jack basically was coming toward him on its own is what  
6 I interpret that as.

7 Q. Let me ask you about that. I want to go back a  
8 second. You and I started off at the beginning of your  
9 testimony here today talking about OSHA?

10 A. Yes.

11 Q. Okay. As I understand your testimony, there are  
12 some specific provisions within OSHA that would apply to  
13 pieces of equipment like this; is that correct?

14 A. Sure.

15 Q. Based on the description you have for  
16 Mr. Blackshire and his testimony and based on what you  
17 see in this report, do either of those things cause you  
18 any concern as it relates to those OSHA requirements?

19 A. Sure.

20 Q. Explain that to us.

21 A. It -- basically, it sounds like, you know, there  
22 is a malfunction with the jack. There is testimony of  
23 Mr. Blackshire, that he felt that there was something  
24 wrong with it. Apparently, other people had indicated  
25 there was something wrong with it.

1                   And the OSHA regulations require that for --  
2     you know, it even states, you know, if at any time a  
3     powered industrial truck is found to be in need of  
4     repair, defective, or in any way unsafe, the truck shall  
5     be taken out of service until it has been restored to  
6     safe operating condition.

7                   And that just makes sense. You don't want  
8     somebody operating a piece of equipment that is  
9     dangerous, malfunctioning, or may even behave  
10    differently than what they would expect.

11       Q. Now, Mr. Madeley, I just -- I want to touch on  
12    something you just -- you just talked about. Under the  
13    OSHA requirements applicable to these pieces of  
14    equipment, does Tyson have an obligation to take  
15    malfunctioning equipment out of service?

16       A. Yes, they certainly do.

17       Q. Do they have an obligation to fix malfunctioning  
18    pieces of equipment?

19       A. Either fix or replace or whatever -- at any rate,  
20    not put it back into service.

21       Q. Under any circumstances, is it excused for a  
22    company to provide a malfunctioning piece of equipment  
23    to its employees to use under your experience?

24       A. No. As a safety engineer, you'd never want to do  
25    that.

1       Q. I want to ask you about one other thing. Do you  
2 attach any significance to Mr. Blackshire's testimony  
3 regarding a prior incident involving this gentleman  
4 named Jose with a pallet jack?

5       A. Certainly. Any -- any and all accidents,  
6 injuries, whether -- or any accident where even maybe  
7 nobody is injured but could have been injured should be  
8 reported to the Safety Department. The Safety  
9 Department has the responsibility to try to track and  
10 see is -- is this a one-time thing, is it a fluke, or is  
11 there something going on we need to be aware of.

12               That's what I did at Marathon Oil with crane  
13 operations. I'd look at the maintenance reports, and I  
14 detected some things the maintenance supervisor had not  
15 picked up on that there was some serious problems with  
16 one of the pieces of equipment that we were able to get  
17 checked and repaired before anybody got hurt.

18       Q. And, Mr. Madeley, let me ask you, if the jury  
19 ultimately decides -- strike that.

20               If the jury ultimately takes  
21 Mr. Blackshire's testimony as true, would it have been  
22 proper to allow this jack to remain in service?

23       A. No. You would never want this piece of equipment  
24 to remain in service.

25       Q. And -- and, sir, let me ask you, in all the -- in



1 all the information you've been provided in this case,  
2 have -- have you -- have you been provided with  
3 deposition testimony from any other witness who says, "I  
4 saw Mr. Blackshire's accident, and he's wrong. It  
5 didn't happen that way"?

6 A. No. The -- Mr. Blackshire is the only one, as  
7 far as I've seen, that actually knows what happened at  
8 that time.

9 Q. Okay. I -- I want to back up, and I -- I want to  
10 do something a little different here for a second.

11 Let's assume for a moment that  
12 Mr. Blackshire is dead wrong. Let's assume that  
13 everything he said is incorrect, inaccurate, false,  
14 whatever you want to call it. If you remove the  
15 possibility that this jack was malfunctioning, how else  
16 could you explain this accident occurring?

17 A. I don't know of any way. I mean, obviously, if  
18 he controlled it -- had it under control, but the -- the  
19 evidence is from the other testimony to exclude that  
20 occurring, the fact is that he is a certified operator,  
21 he's comfortable operating the piece of equipment. His  
22 supervisor had observed him and never observed him  
23 doing anything incorrectly, so there's not really any  
24 other logical explanation for this type of -- of an  
25 accident.

1       Q. So let me walk back. Let's -- let's assume for a  
2 minute that we want to say Mr. Blackshire did something  
3 wrong, that's why this accident happened. Is that  
4 supported by the documents you've reviewed in this case?

5       A. No. In fact, he was never written up for it, and  
6 their policy is that if you do anything dangerous or  
7 unsafe with the operation of a pallet jack, that you  
8 will receive disciplinary action. And there's nothing  
9 in his file indicating that he was ever written up for  
10 anything.

11      Q. And, Mr. Madeley, let me show you. This is a  
12 page from Plaintiff's Exhibit 18 -- and, actually, let  
13 me do this. And this is from one of Tyson's -- this is  
14 from one of Tyson's manuals. Can you identify what's  
15 written up here at the top?

16      A. Yes. This is the driving rules and operating  
17 policy for the Carthage processing plant.

18      Q. Okay. I'm going to -- I'm going to zoom in on  
19 the section that I've blocked there. Can you read that,  
20 sir?

21      A. It says, "Disciplinary action will be taken if  
22 after investigation is determined that the operator  
23 violated any safe operator rules or policy whether an  
24 accident, slash, incident occurred or not."

25      Q. Sir, based on Tyson's own documentation, if

1 someone determined that Anthony Blackshire violated  
2 their operating rules with regard to this pallet jack  
3 and it caused an accident, would he have been subject to  
4 disciplinary action?

5 A. According to their policy, he would -- he would  
6 be, yes.

7 Q. And, sir, have you seen anything in this case,  
8 whether it's testimony or documentation, that  
9 Mr. Blackshire received any type of disciplinary action  
10 as a result of this accident?

11 A. No, nothing.

12 MR. PIERCE: Your Honor, may we approach?

13 THE COURT: Yes.

14 (Bench conference.)

15 MR. PIERCE: Your Honor -- Your Honor, I  
16 only have one other question I'd like to ask this  
17 witness, but I don't want to run afoul of the motion in  
18 limine.

19 THE COURT: That's good.

20 MR. PIERCE: I would like to ask him if in  
21 addition to what he's reviewed, if there's any other  
22 type of information he would be interested in seeing in  
23 this case. And I think that what he would likely say is  
24 either maintenance or inspection records for the  
25 forklift itself.

1           THE COURT: Well, I think we're going to  
2 make it clear. You're bringing your witness -- y'all's  
3 explanation is that these -- when they went from one  
4 system to another, I think he's entitled to ask him that  
5 question without violating the motion in limine.

6           MR. PIERCE: That's all that I have, Judge.  
7 I'm not going to ask him anything else.

8           THE COURT: Okay.

9           (Bench conference concluded.)

10          Q. (By Mr. Pierce) Mr. Madeley, I believe I only  
11 have one final question for you, and I want you to be  
12 very clear about what I'm asking you. You told us about  
13 what you reviewed so far in this case. In addition to  
14 what has been provided to you, is there anything else --  
15 any other types of documents that would have been useful  
16 for you to review in analyzing this accident?

17          A. Any additional accident reports pertaining to  
18 forklift accidents or pallet jack accidents. I believe  
19 the nurse indicated there had been five or six other  
20 accidents involving pallet jacks. And I would like to  
21 have reviewed those, as well as the maintenance and  
22 repair records for the pallet jacks.

23          MR. PIERCE: Your Honor, that's all I have.  
24 I'll pass the witness.

25          THE COURT: Okay. Cross examination?

1 MR. MAYER: Yes, Your Honor.

2 CROSS EXAMINATION

3 BY MR. MAYER:

4 Q. Mr. Madeley, my name is Zach Mayer. I represent  
5 Tyson. I'm going to be asking you a few questions.

6 Sir, when you first formulated your opinions in  
7 this case, you believed that Mr. Blackshire was hit by a  
8 forklift, didn't you?

9 A. Yes, that was the original description. Before I  
10 had read any depositions, that was the initial  
11 understanding that I had at the time.

12 Q. And when you formulated your initial opinions, it  
13 was that Tyson had too small of a work space for a  
14 forklift and Mr. Blackshire to be in the same area,  
15 true?

16 A. Yes. The way it was described to me, that was  
17 the basic scenario.

18 Q. And -- and you later found out that it was not a  
19 forklift involved in the incident but a pallet jack?

20 A. That is correct.

21 Q. But the OSHA citations and your opinions with  
22 regard to Tyson's violation haven't changed, have they?

23 A. Some of them did. At my deposition, I indicated  
24 which of the OSHA sections that would have applied to  
25 the other scenario no longer applied.

1 Q. When you also formulated your opinions in this  
2 case, you had not reviewed any information about the  
3 training programs that were in place at Tyson, true?

4 A. That's correct, I did not have that available at  
5 the time.

6 Q. And when you formulated your opinions in this  
7 case, you also did not review any information about what  
8 the maintenance program was at Tyson, did you?

9 A. My initial opinions, that is correct.

10 Q. And as we sit here today, even up until trial,  
11 you still have not inspected the actual pallet jack,  
12 have you?

13 A. That is correct. As Mr. Howard testified,  
14 though, that pallet jack would not be available because  
15 they change them out every three years, and so it would  
16 not be available.

17 Q. When you -- have you asked to inspect any other  
18 types of similar pallet jacks?

19 A. No.

20 Q. Have you on your own gone to try to find a  
21 similar Crown pallet jack so that you could inspect it?

22 A. Not specifically with regard to this case. I  
23 have inspected Crown pallet jacks in the past.

24 Q. Sir, my question is, in your work in this case,  
25 have you gone and inspected any Crown pallet jacks

1 similar to the model that was involved in this incident?

2 A. No, I have not.

3 Q. Now, have you reviewed any blueprints or asked to  
4 inspect the plant itself to see the configuration of the  
5 plant?

6 A. No.

7 Q. Since formulating your original opinions in this  
8 case, you have reviewed information concerning the  
9 maintenance program at Tyson, true?

10 A. The -- from Mr. Howard's deposition testimony,  
11 yes.

12 Q. And you learned that according to the testimony  
13 in this case, there is a weekly, monthly, and quarterly  
14 servicing of the pallet jack, correct?

15 A. Yes.

16 Q. Do you believe that as an employer, such as  
17 Tyson, a weekly, monthly, and quarterly inspection of  
18 the pallet jack is prudent?

19 A. If -- it certainly is. It should be. I mean,  
20 well, sometimes maintenance programs are evolving. If  
21 it's deemed that it's not sufficient, then you may have  
22 to do it more frequent, but generally that -- you know,  
23 it's -- it's generally a good -- good policy.

24 Q. So if Tyson is implementing a weekly, monthly,  
25 and quarterly servicing, you believe that would be

1 reasonable as an employer?

2 A. Yes. As well as -- as well as if they have a  
3 special program that everyone is aware of that if  
4 there's any malfunctions, any problems that they're  
5 having, that they have a -- a written procedure to make  
6 sure that it does get taken care of.

7 Q. Sir, my question is if Tyson had a weekly, a  
8 monthly, and a quarterly servicing program, is that  
9 reasonable?

10 A. It's reasonable. It may not be adequate, but  
11 it's reasonable.

12 Q. Now, do you also think that an employer, such as  
13 Tyson, should ask the actual operator of the pallet jack  
14 to inspect the pallet jack before operating it?

15 A. Certainly.

16 Q. And, in fact, isn't that an OSHA requirement of  
17 anyone who operates a piece of equipment?

18 A. Yes, although the operation -- inspection  
19 checklist that's in the manual would not necessarily  
20 cover this particular type of, you know, apparent  
21 malfunction.

22 Q. We -- we can agree that before operating a piece  
23 of equipment, the operator should inspect it?

24 A. Sure.

25 Q. We can also agree that, according to



1 Mr. Blackshire's own testimony, he was a certified  
2 pallet jack operator, correct?

3 A. Yes.

4 Q. And that is that he had gone through a written  
5 instruction, verbal instruction, and reviewed a -- a  
6 video, true?

7 A. Yes.

8 Q. And that after he reviewed and went through that  
9 classroom program, he took a test and passed the test?

10 A. Yes.

11 Q. Do you believe that is appropriate for an  
12 employer, such as Tyson, to certify their pallet jack  
13 operators?

14 A. Certainly.

15 Q. Now, I understand that it's your opinion in this  
16 case that there was something wrong with the pallet  
17 jack, true?

18 A. Yes.

19 Q. Have you tried to do anything mechanical, whether  
20 it be testing or inspection of a -- of a different  
21 prototype pallet jack to try to determine how it was  
22 that this occurred?

23 A. No.

24 Q. Now, I understand that when the handle is in the  
25 up position, there's a braking position?

1 A. Yes.

2 Q. Isn't it also true that when the handle is in a  
3 down position, there's also a brake position?

4 A. There -- it's supposed to work that way, yes.

5 Q. I'm going to show you a demonstrative. Can you  
6 see that?

7 A. If I can move, yes.

8 Q. All right. Now, what I'm talk --

9 MR. MAYER: May I have a little leniency  
10 from the podium?

11 THE COURT: Sure.

12 Q. (By Mr. Mayer) What I'm referring to is that  
13 we've heard when you let go of the handle and the handle  
14 goes up, there's a spring that should take it into the  
15 up position, correct?

16 A. Yes.

17 Q. And when it's in that up position, there's an  
18 automatic brake on?

19 A. Correct.

20 Q. Now, it's been Mr. Blackshire's testimony that  
21 when he turned around, the lever was down?

22 A. In a lower position. It wasn't necessarily all  
23 the way down, but it was in a -- it was in a down  
24 position because he had seen it going up and it was now  
25 in a down position of some sort.

1 Q. Do you know if it was all the way down or not?

2 A. I don't know.

3 Q. But if it is in the down position, there's also a  
4 brake mechanism just like if it was in the up position,  
5 true?

6 A. There should be, assuming it's functioning  
7 correctly.

8 Q. And you have no reason to doubt that the Crown  
9 pallet jack that was involved in this one had the same  
10 type of braking mechanism in the down position as it did  
11 in the up?

12 A. As far as I know, it was supposed to.

13 Q. Now, beyond just the braking when it's up or  
14 down, there's also traveling. And you obviously move  
15 the pallet jack around the plant, true?

16 A. Yes.

17 Q. In order to move the pallet jack, you have to  
18 turn the accelerator, don't you?

19 A. Generally speaking, yes.

20 Q. There's mechanical devices that stop the pallet  
21 jack from moving without turning the throttle, true?

22 A. I'm not sure if it is going to be hydraulically  
23 stopped or if it is going to merely be in a  
24 free-wheeling position. In other words, you could push  
25 it by hand, but the brakes are not on.

1       Q. But in order to get it to accelerate either  
2 forward or backwards, there's a throttle that must be  
3 turned to accelerate, true?

4       A. Or gravity. If it's on a slight incline, it may  
5 roll on its own.

6       Q. Sir, are you aware of any incline at the plant  
7 that caused this to roll?

8       A. I -- I don't know. I'm not -- haven't seen the  
9 plant, but that's a possibility besides the throttle  
10 control.

11      Q. In order for an operator to move it forward, he's  
12 got to turn the control down, true?

13      A. Generally speaking, yes.

14      Q. And if he lets go and it springs up or if he lets  
15 go and it goes down, the brake's on and it will not  
16 move?

17      A. If it is functioning correctly or unless there is  
18 a malfunction within the controls itself that allow it  
19 to accelerate on its own.

20      Q. Mr. Madeley, have you heard of situations where  
21 because of the way an operator is operating a pallet  
22 jack, he happens to either run over his own foot or  
23 someone else's foot?

24      A. I have seen it before.

25      Q. You've actually seen it?

1       A. Well, I've -- I've investigated a case where that  
2       had occurred.

3       Q. And this Mr. Jones or Jose fellow, you don't know  
4       as we sit here today whether he just rolled over his own  
5       foot when he was operating that pallet jack, do you?

6       A. I don't have any of the details.

7       Q. And your opinions -- when it was back -- a  
8       forklift hitting Mr. Blackshire, you just revised those  
9       and then started talking about a pallet jack, right?

10      A. I'm not sure I understand the question.

11      Q. Sure. Initially, when you were talking about the  
12      forklift hitting Mr. Blackshire, when you learned it was  
13      a pallet jack, you revised those opinions with the facts  
14      in this case?

15      A. That is correct.

16      Q. And you came up with your opinions before you  
17      knew anything about Tyson's policy for maintenance or  
18      training, true?

19      A. Yes, because the pol -- the opinions that I  
20      developed did not directly address that. It just  
21      addressed the fact that if, in fact, this is a  
22      malfunctioning and defective piece of equipment, that it  
23      should not be in service. I don't need to know what the  
24      policy is. It just -- all it means is that they're in  
25      violation of federal law, as well as good safety

1 practice.

2 Q. Sir, maybe you didn't understand my question.

3 My question is, did you formulate your  
4 opinions before reviewing the policies for training and  
5 the policies for maintenance there at Tyson?

6 MR. PIERCE: Your Honor, I'm going to object  
7 as asked and answered.

8 THE COURT: Overruled.

9 A. The opinions -- as I investigate -- as I get  
10 additional information, my opinions are always evolving  
11 and are being adjusted to accommodate the new  
12 information --

13 THE COURT: No. Let's answer the question  
14 he asked you. Do you know what the question is that he  
15 asked you? He asked you at the time you gave your  
16 initial opinions you had not yet reviewed their  
17 maintenance policies and their training policy. Is that  
18 the question?

19 MR. MAYER: That's the question, Your Honor.

20 A. I'm sorry. I misunderstood. I didn't hear the  
21 word "initial" in there.

22 Before I -- yes, the initial opinions on the  
23 first report that we've discussed at my deposition, that  
24 is correct.

25 Q. (By Mr. Mayer) And now that you know the

1 training and the maintenance program there at Tyson, you  
2 believe that those programs are reasonable and prudent,  
3 true?

4 A. I didn't use the word "prudent." I said it's  
5 reasonable. I said, they may not be adequate, and they  
6 may not be safe because apparently there's not a policy  
7 in place in order for people to report, and there's no  
8 documentation for maintenance of -- and repairs to  
9 defective pieces of equipment.

10 Q. Sir, would you agree that the training and the  
11 maintenance program at Tyson is reasonable?

12 A. I believe that the training program seems  
13 reasonable, based on what I've seen and what we've heard  
14 discussed today. The maintenance program, I have not  
15 seen. I've only heard a couple of phrases that were  
16 discussed in a deposition as to what generally was done,  
17 so I can't evaluate the entire maintenance program.

18 Q. And the only evidence that you are judging how  
19 this incident occurred or how it may have occurred is  
20 the testimony of Mr. Blackshire in this case, true?

21 A. That is correct. He's the only one that was  
22 there.

23 MR. MAYER: No further questions. I'll pass  
24 the witness, Your Honor.

25 THE COURT: Redirect?

1                   MR. PIERCE: Yes, sir, very brief. Your  
2 Honor, may I take this down?

3                   THE COURT: Yes.

4                   REDIRECT EXAMINATION

5 BY MR. PIERCE:

6           Q. Mr. Madeley, you aren't critical about the  
7 training that Tyson provided Mr. Blackshire, are you?

8           A. No, I'm not.

9           Q. And, sir, would it be fair to say that based on  
10 the record, the people at Tyson thought Blackshire was a  
11 good operator?

12          A. That's the testimony, yes.

13          Q. There were questions asked of you about whether  
14 you inspected the Crown pallet jack involved in this  
15 accident. Do you recall those questions?

16          A. Yes.

17          Q. First of all, based on Mr. Howard's testimony, do  
18 you have any understanding whether Tyson even still has  
19 this pallet jack?

20          A. It would appear they likely do not. If his  
21 testimony is accurate that they change them out every  
22 three years on a rotating basis, so they would not have  
23 that pallet jack anywhere.

24          Q. And, sir, you've seen Crown pallet jacks before,  
25 correct?



1       A.   Yes, I have.

2       Q.   You've read manuals for Crown pallet jacks  
3 before, correct?

4       A.   Correct.

5       Q.   In fact, in this case, you even read Tyson's own  
6 manual about this pallet jack, correct?

7       A.   Yes.

8       Q.   You were asked a lot of questions about the  
9 maintenance program at Tyson. Do you recall those  
10 questions?

11      A.   Yes.

12      Q.   Sir, as you sit here today under oath, can you  
13 tell us the last time that this particular pallet jack  
14 was inspected before this accident occurred?

15      A.   No.

16      Q.   What would you need to have to be able to do  
17 that?

18      A.   Maintenance records.

19      Q.   Sir, as you sit here today under oath, can you  
20 tell us the last time that there was routine maintenance  
21 performed on this pallet jack before this accident  
22 occurred?

23      A.   No, I can't.

24      Q.   Why not?

25      A.   No records.

1       Q. Sir, is it reasonable and prudent to put a  
2 malfunctioning pallet jack back into service?

3       A. It's not only unreasonable, it's reckless to do  
4 so.

5               MR. PIERCE: Your Honor, I'll pass the  
6 witness.

7               THE COURT: Okay.

8               MR. MAYER: Nothing further, Your Honor.

9               THE COURT: All right. You may step down,  
10 Mr. Madeley.

11              THE WITNESS: Thank you, Judge.

12              THE COURT: Who will be your next witness?

13              MR. PIERCE: Your Honor, the plaintiff would  
14 call Dr. Kenneth Lee.

15                       (Witness sworn.)

16              THE COURT: Proceed.

17                       KENNETH LEE, M.D.,  
18 having been first duly sworn, testified as follows:

19                               DIRECT EXAMINATION

20 BY MR. PIERCE:

21       Q. Dr. Lee, can I get you to state your full name  
22 for the record?

23       A. Sure. My full name is Kenneth Jin Hon Lee.

24       Q. And, sir, I'm going to -- I'm going to take a  
25 minute to walk through your professional background.

1 Let's start out at the college level. Where did you go  
2 to college?

3 A. I went to college at Duke University.

4 Q. All right. And what was your major?

5 A. Biology.

6 Q. And what year did you graduate?

7 A. 1994.

8 Q. What did you do after college?

9 A. I went to med school.

10 Q. Where did you go to medical school?

11 A. At the same institution, Duke University.

12 Q. What year did you finish medical school?

13 A. 1999.

14 Q. Doctor, what did you do after finishing medical  
15 school?

16 A. I traveled to the University of Pittsburgh for an  
17 orthopedic residency.

18 Q. And how long did that residency last?

19 A. Five years.

20 Q. And so that would take us up through what year?

21 A. 2004.

22 Q. All right. What did you do in 2004?

23 A. I then attained a fellowship award from Harvard  
24 for spine surgery and then traveled out to UCLA for a  
25 year of spine surgery training.

1 Q. So that takes us through '06?

2 A. The fall of '05, 2005.

3 Q. The fall of '05. What did you do in the fall of  
4 '05?

5 A. I then traveled to -- I actually moved to Houston  
6 where I started my practice.

7 Q. Doctor, when were you first licensed to practice  
8 medicine?

9 A. In 1999.

10 Q. Okay. And your license has been in good standing  
11 since that time?

12 A. Yes.

13 Q. And -- and, sir, what -- what specific field do  
14 you practice in?

15 A. Orthopedic surgery, but restricted to spine  
16 surgery.

17 Q. Okay. And that's a -- that's a good point. Let  
18 me back up. Orthopedic surgeons can treat all kinds of  
19 different things, shoulders, elbows, knees, ankles  
20 backs?

21 A. Yes.

22 Q. And then you -- you say you restrict your  
23 practice only to the spine?

24 A. Correct, both in the neck and -- and low back.

25 Q. Why is that?

1       A. Just for advancing technologies, for better  
2 expertise, just to focus on one area.

3       Q. And, Doctor, are you board certified?

4       A. Yes, sir.

5       Q. Okay. If you would, tell the jury what it takes  
6 to become board certified.

7       A. So after completing your training, you have to  
8 take a written exam which you have to pass, and then  
9 after that, you have to accrue enough surgical cases  
10 where you then go for an oral examination. And after  
11 that, you are board certified.

12      Q. And, Doctor, do you have practice privileges at  
13 hospitals in the Houston area?

14      A. Yes, sir.

15      Q. Okay. If you could, tell us where -- where you  
16 practice.

17      A. At Methodist Sugar Land Hospital, St. Luke's  
18 Sugar Land Hospital, Foundation Surgical Hospital.

19               MR. PIERCE: Your Honor, at this time, the  
20 plaintiff would tender Dr. Lee as an expert in the field  
21 of orthopedic surgery.

22               THE COURT: The Court will allow him to  
23 express his opinions.

24               MR. PIERCE: Thank you, Judge.

25      Q. (By Mr. Pierce) Dr. Lee, before we get into

1 Mr. Blackshire's case specifically, I'd like to get you  
2 to talk to the jury just a little bit about the anatomy  
3 of the spine.

4 First of all, when we feel down our back and  
5 we feel the bones in our back, what's that that we're  
6 feeling?

7 A. Usually the processes that you can feel in the  
8 middle of your back are just what's called spinus  
9 processes.

10 Q. And what about the disks in our spine? Could you  
11 first tell us what the disks are?

12 A. Sure. So the disks are basically cushions, if  
13 you will, in between the bones in your low back.

14 Q. All right. And -- and what -- we've heard some  
15 references to things called disk bulges. Tell us what a  
16 disk bulge is.

17 A. So I tend to tell my patients a disk is simply  
18 like a jelly donut, for lack of better terms. There's a  
19 soft inside which basically provides the cushioning, and  
20 then there's an outer rim of the donut which kind of  
21 contains the -- the cushioning material. And so any  
22 time there's pressure or damage to the disk, there can  
23 be a bulging, kind of like a donut pushing out. And  
24 sometimes the disk material can actually herniate out  
25 into the spinal canal.

1 Q. And, sir, we talked about the disk. Let me ask  
2 you about the vertebrae in your spine. Is it possible  
3 to injure the vertebrae in your spine?

4 A. Absolutely.

5 Q. Okay. And, sir, both of those types of injuries,  
6 a bulging disk, that can be a painful injury; is that  
7 correct?

8 A. Correct.

9 Q. What about a fractured vertebrae?

10 A. Correct.

11 Q. Now, you saw Mr. Blackshire as a patient; is that  
12 correct?

13 A. Yes.

14 Q. And you understand that Mr. Blackshire actually  
15 got your name from my office; is that right?

16 A. Correct.

17 Q. Sir, is there anything about your treatment of  
18 Mr. Blackshire, your examination of him, that is any  
19 different than any of the other patients you see?

20 A. No. I treat patients. I don't treat the  
21 referral source, whether it's an academic institution, a  
22 friend, a neighbor, or -- or a law firm.

23 Q. And, sir, just to -- just to give the jury an  
24 idea, in an average week, how many patients do you see?

25 A. An average week, 60 to 90, depending on the week.

1       Q. And if you're seeing somewhere between 60 to 90  
2 patients a week, when that patient walks into your  
3 office for an examination, for each patient, do you have  
4 a specific idea of how he got there?

5       A. Not always.

6       Q. Now, when you first saw Mr. Blackshire, you took  
7 a history from him; is that correct?

8       A. Correct.

9       Q. And we're going to talk about your treatment more  
10 in detail in just a moment, but I -- I want to ask you  
11 broadly what was the explanation Mr. Blackshire gave you  
12 as to how he was injured?

13      A. He basically told me that he was operating a  
14 chicken plant and was operating a -- a pallet jack that  
15 contained tubs of chicken that weighed about 60 to 70  
16 pounds. Somehow he lost control of the pallet jack  
17 and it ended up striking him and pinning him against a  
18 con -- concrete wall.

19      Q. And -- and, Dr. Lee, let me ask you just --  
20 again, speaking broadly, based on the description that  
21 Mr. Blackshire gave to you, is that the type of a  
22 traumatic incident that can cause a disk to bulge?

23      A. It can, yes.

24      Q. And, sir, again, based on the description  
25 Mr. Blackshire gave to you, is that the type of a



1 traumatic incident that can cause a vertebrae to  
2 fracture?

3 A. Sure, yes.

4 Q. Now, Doctor, as part of your treatment of  
5 Mr. Blackshire, did you have an opportunity to review  
6 medical records from the facilities and others doctors  
7 he had seen before coming to you?

8 A. Yes, at -- various documents at various times.

9 Q. Okay. And -- and, sir, I'm not -- I'm not going  
10 to run through all of these in great detail, but I -- I  
11 do want to hit a couple of them with you, all right?

12 A. Sure.

13 Q. Do you remember seeing the records of a  
14 Dr. Nielsen?

15 A. Yes.

16 Q. Okay. Tell the jury who Dr. Nielsen was, if you  
17 remember.

18 A. I think Dr. Nielsen is a board certified family  
19 practitioner in Louisiana, I believe.

20 Q. Okay. And -- and, sir, to speed things up, I'll  
21 represent to you that Mr. Blackshire saw Dr. Nielsen on  
22 November the 6th, November the 16th, and November the  
23 28th of 2007. Does that -- does that comport with your  
24 memory?

25 A. Yes.

1       Q. I want to ask you a couple of things. Let's  
2 see -- for the record, and this is -- this is from  
3 Plaintiff's Exhibit No. 14, Pages 5 and 6. And,  
4 Dr. Lee, do you recognize that document?

5       A. Yes.

6       Q. Okay. And let's see, can you -- can you make out  
7 the date of the examination?

8       A. Sure. It's November 6th, 2007.

9       Q. Now, Dr. Lee, you and I were -- were talking  
10 before. You said one of the first things you do as a  
11 physician is you'll take a history from the patient; is  
12 that right?

13      A. Yes.

14      Q. Do you also perform a physical examination?

15      A. Yes.

16      Q. What's the point of performing a physical  
17 examination?

18      A. Basically, to obtain any sort of objective  
19 information that we can to correlate with the history.

20      Q. And -- and give us an idea, if you have -- if you  
21 have somebody like Mr. Blackshire that comes in and he's  
22 complaining of back pain, what sort of an exam would you  
23 perform?

24      A. So we'll ask him to walk around the examination  
25 room to see if his gait is affected by any sort of back

1 pain. We'll then palpate or feel his -- his lumbar  
2 spine to see if there's any specific areas of  
3 tenderness. We'll also test his range of motion of his  
4 low back to see if it's restricted. And, finally, we'll  
5 do some motor and sensory tests of his legs to see if  
6 there are any neurologic deficits.

7 Q. And, Dr. Lee, what I'm going to do, I'm going to  
8 turn to the second page of Dr. Nielsen's visit on  
9 November the 6th. There are a couple of findings from  
10 his exam I wanted to ask you about. Okay. First, we  
11 see this reference to thoracic spine. What's your  
12 thoracic spine?

13 A. So the thoracic spine is the area of the spine  
14 between your neck and your low back.

15 Q. Okay. Now, there are a couple of things I want  
16 to ask you about. There's -- there's a reference there  
17 that says -- actually, I'm not even going to try and  
18 pronounce it. I'm going to let you.

19 A. It says, thoracolumbar PSMS bilaterally.

20 Q. Okay. What does that mean to you, Doctor?

21 A. He has tenderness bilateral -- tenderness on both  
22 sides of his thoracic spine or chest wall.

23 Q. Okay. The -- the next section we see under  
24 there, it says lumbar sacral spine; is that correct?

25 A. Correct.

1 Q. What -- what area of your back is that?

2 A. So typically people tend to refer to as the low  
3 back.

4 Q. All right. And there are a couple of things here  
5 I want to ask you about. First, there's a reference to  
6 paraspinous muscle spasms. Did I read that correctly?

7 A. Yes, sir.

8 Q. If you would, explain to the jury what that is.

9 A. So, basically, during the examination at that  
10 time point, whenever the physician was palpating or  
11 pushing upon his lower back or examining that area, he  
12 could actually feel or visualize the muscles kind of  
13 moving and contracting by themselves.

14 Q. And -- and, sir, just -- is this something --  
15 when you perform your own examinations, do you look for  
16 spasms?

17 A. Yes.

18 Q. And are spasms something that a patient can fake?

19 A. No. I think as I mentioned earlier, it's usually  
20 an -- an uncontrolled motion.

21 Q. And what -- when you see -- if you're performing  
22 an examination on a patient complaining of low back pain  
23 and you see spasm, what does that -- what does that  
24 indicate to you?

25 A. It's a sign that there is some sort of trauma

1     that's occurred recently to the point that the patient  
2     is still experiencing pain enough to cause these  
3     uncontrolled reactions of the muscles.

4       Q.   Doctor, there's a -- there's another section I  
5     want to ask you about.  It says, forward flexion  
6     decreased, painful 30 degrees.  Do you see that?

7       A.   Yes, sir.

8       Q.   Okay.  What's the significance of that to you,  
9     Doctor?

10      A.   So -- usually, depending on how flexible a  
11     patient is -- usually, when you try to bend forward --  
12     during this particular test, the physician is asking the  
13     patient to try to keep a knee straight and -- and bend  
14     forward and touch the toes if possible.  And on that  
15     particular visit, the patient can only flex about 30  
16     degrees and was stopped by pain.

17      Q.   Okay.  And, sir, let me ask you -- let's go ahead  
18     and go down to the bottom to the section that says  
19     assessment.  What was Dr. Nielsen's assessment on this  
20     day?

21      A.   No. 1 was new low back pain.  No. 2 was a new  
22     sprain that was thoracic muscles.  And No. 3 was an  
23     injury or bruising of the right leg.

24      Q.   And, Doctor, we're going to -- again, we're not  
25     going to go through every medical record.  We're going

1 to kind of jump ahead to you after this, but these  
2 assessments that were initially made by Dr. Nielsen  
3 within less than two weeks after this injury, are those  
4 the same assessments that we see carried forward  
5 throughout Mr. Blackshire's medical records?

6 A. Yes.

7 Q. All right. Now, Doctor, let me ask you, there  
8 are some -- there are some medical imaging tests that I  
9 want to talk to you about a little bit. I think all of  
10 us know what an X-ray is. Doctor, when would you order  
11 an X-ray?

12 A. You would order an X-ray whenever there's been  
13 persistent pain, has not improved, generally -- as a  
14 general guideline, over six weeks.

15 Q. Okay.

16 A. Or if there's been some sort of trauma.

17 Q. There's also a study called a CT scan. Can you  
18 tell us what that is?

19 A. A CT scan in general is just simply a more  
20 defined imaging study of -- of the bone -- of the bony  
21 architecture of the spine.

22 Q. Now, Doctor, do you remember -- during the time  
23 that Mr. Blackshire was seeing Dr. Nielsen, do you  
24 remember whether Dr. Nielsen ordered a CT scan?

25 A. I think he ordered actually X-rays and -- and a

1 CT scan, as well.

2 Q. And, Doctor, I'm going to show you actually a  
3 report from the CT scan, and the copy is not very good,  
4 but can -- can you make out the date of the procedure  
5 there?

6 A. Yes, sir. It looks like December 3rd, 2007.

7 Q. Okay. And then I want to talk to you about the  
8 findings. Doctor, take a minute and just take a look at  
9 this and tell us if there's anything significant that's  
10 shown on this CT.

11 A. So underneath the impression section, the  
12 radiologist described a fracture or injury to the left  
13 side of the vertebral column. Specifically, there was a  
14 fracture of a transverse process at the level labeled  
15 L-2.

16 Q. Okay. And -- and, Doctor, what -- what is the  
17 significance of that fracture?

18 A. It means there was enough trauma to that  
19 particular area of the spine to result in -- in a  
20 fracture.

21 Q. And -- and, Doctor, this -- this may seem like a  
22 silly question, but is it possible to fake a fractured  
23 vertebrae on a CT?

24 A. No, sir.

25 Q. And -- and do you remember during the time that

1 Mr. Blackshire was seeing Dr. Nielsen, do you recall  
2 whether Dr. Nielsen was giving Mr. Blackshire any  
3 medications?

4 A. I think he -- I think he did describe some  
5 anti-inflammatories at least.

6 Q. And -- and, sir, whenever we talk about  
7 conservative treatment, can you tell us what -- what  
8 that means?

9 A. That would basically mean anything nonoperative  
10 or nonprocedural. So consisting of medications, rest,  
11 and physical therapy.

12 Q. And, sir, again, we're not going to go through  
13 all the records, but you understand that Mr. Blackshire,  
14 after seeing Dr. Nielsen, eventually saw Dr. Kerr, as  
15 well?

16 A. Correct.

17 Q. Were the diagnoses that Dr. Kerr made, were they  
18 essentially the same as Dr. Nielsen's?

19 A. In general, yes, sir.

20 Q. All right. What about the treatment that  
21 Dr. Kerr provided?

22 A. Dr. Kerr also prescribed some further medications  
23 and also recommended a -- an MRI of the lumbar spine, as  
24 well.

25 Q. Do you recall whether Dr. Kerr ordered physical



1 therapy?

2 A. Yes, he did.

3 Q. And -- and, sir, the next doctor we're going to  
4 get to is you. Before we leave these other doctors  
5 alone, I just want to ask you, in either Dr. Nielsen's  
6 records or Dr. Kerr's records, did you ever see any  
7 indication that Mr. Blackshire was a malingerer?

8 A. No.

9 Q. And -- and just tell the jury, what is a  
10 malingerer?

11 A. So a malingerer in general terms is any patient  
12 trying to fake symptoms and/or exam findings for  
13 secondary gain.

14 Q. And, Doctor, did you see in any of those medical  
15 records any indication that the doctors thought that  
16 Mr. Blackshire was magnifying his symptoms?

17 A. No.

18 Q. Now, Doctor, do you have a copy of your chart  
19 with you?

20 A. Yes, sir.

21 Q. Okay. It may be easier for you just to refer to  
22 that. Do you recall when you first saw Mr. Blackshire  
23 as a patient?

24 A. Yes. My initial evaluation was on November --  
25 I'm sorry, was on -- yes, November 6th of 2009.

1       Q. And -- and, Doctor, I'll represent to you that  
2 we've got a little bit of a gap. The last time that  
3 Mr. Blackshire saw Dr. Kerr was January the 15th of  
4 2008, so this would be about a year and ten months after  
5 that?

6       A. Right, right -- correct.

7       Q. And, Doctor, let me ask you, in your -- in your  
8 medical practice, have you seen patients before with  
9 back injuries similar to Mr. Blackshire who have gone  
10 that long without treatment?

11      A. Sure.

12      Q. Okay. And why?

13      A. It can be for various reasons. You know, as we  
14 discussed earlier, Mr. Blackshire had already undergone  
15 a course -- at least two courses of physical therapy.  
16 He may have for financial reasons decided to continue  
17 exercises at home. He may have been self treating with  
18 over-the-counter medications, and he may have had  
19 difficulty to access medical care at that time.

20      Q. Sir, at the time Mr. Blackshire saw you in  
21 November of 2009, what were his complaints?

22      A. He mainly complained of back pain was his chief  
23 complaint, and his secondary complaint was -- was  
24 radiating leg pain.

25      Q. Okay. And, Doctor, based on his complaints and

1 based on your examination, what did you decide to do for  
2 him going forward?

3 A. Well, when I first evaluated him, I wanted to  
4 continue further physical therapy. And when that did  
5 not work, along with other medications, I recommended  
6 that he try an epidural steroid injection.

7 Q. There's one type of diagnostic test we haven't  
8 talked about yet, and that's an MRI.

9 A. Correct.

10 Q. Did you order an MRI for Mr. Blackshire?

11 A. Yes.

12 Q. And -- and, Doctor, if you would, explain to the  
13 ladies and gentlemen of the jury, if he's already had  
14 X-rays, if he's already had a CT scan, why do we need an  
15 MRI?

16 A. Well, his CT scan mainly just looks at the bony  
17 architecture of his spine. And since his symptoms had  
18 still persisted since the time of injury, I wanted a new  
19 updated imaging specifically looking at the disk and/or  
20 nerves since he had complained of some radiating leg  
21 pain, so I ordered a -- an updated imaging test.

22 Q. And, Dr. Lee, what did that MRI show?

23 A. The MRI, if I recall correctly, showed some  
24 bulging disks at two levels in his low back.

25 Q. Okay. And -- and, sir, give us an idea, you said

1     that you -- you saw him several times over the course of  
2     the next few months; is that right?

3         A.   Yes, sir.

4         Q.   And what type of treatment did you provide for  
5     him?

6         A.   Again, mainly conservative care, other than the  
7     recommendation for the steroid injection.

8         Q.   And if you would -- well, first of all, did  
9     Mr. Blackshire undergo that steroid injection?

10        A.   Yes, he did.

11        Q.   Dr. Lee, could you explain to the ladies and  
12    gentlemen of the jury what an epidural steroid injection  
13    is?

14        A.   Sure.  So this epidural steroid injection is  
15    simply a -- an injection of steroids which is used to  
16    calm down any sort of inflammation in and around the low  
17    back.  So, ideally, I was hoping this injection that's  
18    performed by a pain management physician would take care  
19    of his back pain, as well as his leg pain.

20        Q.   How did he respond to the epidural steroid  
21    injections?

22        A.   He told me he actually did quite well.  He, you  
23    know, guesstimated that he obtained about 60 percent  
24    pain relief.  However, this pain relief was -- was  
25    rather short, only lasting a couple of weeks.

1       Q. Now -- - now, Dr. Lee, you haven't performed any  
2 type of a surgery on Mr. Blackshire; is that right?

3       A. Correct.

4       Q. At present, do you feel like he has a surgical  
5 injury?

6       A. Not based upon my last evaluation, no.

7       Q. And -- and, Doctor, let me ask you, the fact that  
8 he hasn't had surgery, does that mean that the injury  
9 that he has is not a serious injury?

10      A. No, not at all. There's many examples where you  
11 could have quite painful conditions, but surgery is not  
12 warranted at that time.

13      Q. And -- and, Doctor, throughout the time that  
14 you've seen Mr. Blackshire, has he continued to have the  
15 same types of complaints as when he first came in to  
16 you?

17      A. Yes, he's been fairly consistent.

18      Q. Have you seen anything to indicate that he's  
19 malingerer?

20      A. No.

21      Q. Have you seen anything to indicate that he's  
22 magnifying symptoms?

23      A. No.

24      Q. Have you seen anything to indicate that he's just  
25 faking it?

1       A.   No.

2       Q.   Doctor, I'm going to ask you, within a reasonable  
3   degree of medical probability, do you believe that the  
4   problems that you were treating Mr. Blackshire for were  
5   caused by his accident on October the 26th, 2007?

6       A.   Yes, I believe it's more than probable.

7       Q.   Okay.   Explain that to the jury.

8       A.   So -- you know, based upon my initial history, as  
9   well as the other physicians that were involved in his  
10   initial care, he did not report any pain prior to this  
11   accident in regards to low back pain and/or leg pain.  
12   After this reported accident in October of '07, he's  
13   continued to have these -- these symptoms.   So based on  
14   his history, it's more than probable that the injury  
15   from October '07, resulted in his current complaints.

16               MR. PIERCE:   Your Honor, may I approach the  
17   witness?

18               THE COURT:   Yes.

19       Q.   (By Mr. Pierce)   Dr. Lee, I'm going to hand you  
20   what we've marked as Plaintiff's Exhibit 7, and I want  
21   to ask you some questions about that.

22       A.   Okay.

23       Q.   Doctor, I'll represent to you that that is a bill  
24   from Memorial MRI.   Does that look correct?

25       A.   Yes, sir.

1 Q. And, sir, we talked about some of the treatment  
2 you ordered for Mr. Blackshire. That included MRIs?

3 A. Correct.

4 Q. It also included epidural steroid injections,  
5 correct?

6 A. Correct.

7 Q. And was that treatment provided at Memorial MRI?

8 A. Yes, sir.

9 Q. And, Doctor, the bill that you have in front of  
10 you that's Plaintiff's Exhibit No. 7, are those the  
11 charges for the treatment you prescribed?

12 A. Yes, sir.

13 Q. Sir, what are the total charges for that  
14 treatment?

15 A. The balance reads \$5,985 and no cents.

16 Q. Okay. And I want to ask you a couple of  
17 questions about that, sir. The medical treatment you  
18 provided, specifically the MRIs and the epidural steroid  
19 injections, did you feel that was reasonable and  
20 medically necessary to treat Mr. Blackshire's condition?

21 A. Yes.

22 Q. And, sir, the charges that are reflected in  
23 Exhibit 7 for the MRIs and for the epidural steroid  
24 injections, are those the usual and customary charges  
25 for such services in the Houston area?

1       A.   Yes.

2       Q.   And, sir, do you feel like that care was  
3   necessitated by the injury that Mr. Blackshire suffered  
4   back on October the 26th of 2007?

5       A.   Yes.

6               MR. PIERCE:  Your Honor, I don't believe  
7   that exhibit was pre-admitted.  Plaintiffs are now  
8   offering Exhibit No. 7.

9               THE COURT:  Okay.

10              MR. MAYER:  No objection, Your Honor.

11              THE COURT:  Received.

12       Q.   (By Mr. Pierce)  Dr. Lee, I want to talk to you  
13   just about one last topic.  As of today, is  
14   Mr. Blackshire totally healed?

15       A.   No.

16       Q.   All right.  Are you going to continue treating  
17   him as one of your patients?

18       A.   If he'd be, yes.

19       Q.   Okay.  And, Doctor, through your examination and  
20   treatment of him, have you reached an opinion as to what  
21   type of medical care he is going to need in the future  
22   specifically related to his low back injury?

23       A.   A general -- a general guideline, yes.

24       Q.   Okay.  Let's talk about categories for just a  
25   second before we get into the numbers.  What -- what



1 types of treatment is he going to need?

2 A. Well, I think he'll probably need continued  
3 medication treatment. He's reported in the past that  
4 these anti-inflammatories and muscle relaxers have given  
5 him good relief, but it's always been short term.

6 Q. Okay. In addition to medication, what else?

7 A. He'll probably need continued physical therapy.  
8 As he stated earlier, it does provide him with some  
9 short-term relief again.

10 Q. All right. Doctor, anything else?

11 A. He's only had one epidural steroid injection, so  
12 most likely he'll need probably a series or so of  
13 epidural steroid injections.

14 Q. Okay. I just put ESI for that.

15 A. Uh-huh.

16 MR. MAYER: Your Honor, may we approach?

17 THE COURT: Yes.

18 (Bench conference.)

19 MR. MAYER: The doctor may say that this is  
20 all based on reasonable medical probability, but right  
21 now he's just saying may need, might need, or possibly  
22 will need, and it's --

23 MR. PIERCE: In fairness, I'll lay -- I'm  
24 going to lay the full predicate with him. I'm not going  
25 to write anything up before I ask him --

1 THE COURT: Based on that representation.

2 How much longer you got, Mr. Pierce?

3 MR. PIERCE: I would say less than five  
4 minutes, Judge.

5 THE COURT: Okay. We're going to take a  
6 break.

7 (Bench conference concluded.)

8 Q. (By Mr. Pierce) Dr. Lee, we're going through  
9 again just categories now, not any dollar amounts. We  
10 talked about medication, physical therapy, ESI. Is  
11 there anything else?

12 A. Finally, yes. If he persisted with the symptoms,  
13 he would eventually require surgery.

14 Q. Okay. Now, Doctor, we've talked about this term  
15 "reasonable medical probability" today, correct?

16 A. Correct.

17 Q. And with the understanding that reasonable  
18 medical probability means more probable than not, can  
19 you tell the ladies and gentlemen of the jury within a  
20 reasonable degree of medical probability whether this is  
21 future care that Mr. Blackshire is going to need to  
22 treat his lower back injury?

23 A. Yes, I believe so.

24 Q. All right. Now, let's go through this. Well,  
25 first of all, Doctor, for each one of these categories,

1 are these things that you prescribe for your patients?

2 A. Yes.

3 Q. Okay. For medication, if you had to project what  
4 he's going to need to continue to treat his back, what  
5 figure would you project?

6 A. Roughly -- low end 5,000; on the high end, 15 to  
7 20, depending on the type and -- and length of duration.

8 Q. Okay. And -- and to be fair, I'll put the low  
9 end of your range there.

10 What about for physical therapy?

11 A. Roughly around 10,000.

12 Q. Okay. What about for epidural steroid  
13 injections?

14 A. I think for a series of three, roughly around  
15 10,000, as well.

16 Q. And that would be consistent with what Memorial  
17 MRI has billed for the one series he's had so far; would  
18 that be correct?

19 A. Yes, sir.

20 Q. Okay. And then for a future surgery, how much --  
21 how much would you project a future surgery would cost  
22 for him -- being -- and give us a conservative number.

23 A. Roughly around 25,000.

24 Q. Okay. And, sir, let me -- I'm going to run  
25 through these with you, as well. Sir, the medication

1     you projected, the 5,000, do you feel that that's  
2     reasonable and medically necessary to treat  
3     Mr. Blackshire's condition?

4         A.   Yes.

5         Q.   And are the charges that you've included there,  
6     are those the usual and customary charges for medication  
7     to treat those types of conditions?

8         A.   Yes.

9         Q.   And, sir, do you feel like the back injury that  
10    is being treated with this medication was caused by the  
11    accident on October the 26th of 2007?

12        A.   Yes.

13        Q.   I'm going to ask you the same questions with  
14    regard to physical therapy.

15                Sir, do you feel like this physical therapy  
16    is reasonable and medically necessary to treat  
17    Mr. Blackshire's condition?

18        A.   Yes.

19        Q.   And, sir, the charge you have for the physical  
20    therapy, is that the usual and customary charge for  
21    physical therapy?

22        A.   Yes.

23        Q.   And, sir, the condition you're treating here, was  
24    it caused by Mr. Blackshire's accident on October 26th,  
25    2007?

1       A.   Yes.

2       Q.   The next thing we have is ESIs.  Sir, the charge  
3   you have here for ESIs of \$10,000, is that a -- first of  
4   all, is that treatment reasonable and medically  
5   necessary to treat his condition?

6       A.   Yes.

7       Q.   And are those charges the usual and customary  
8   charges for those services in the Houston area?

9       A.   Yes.

10      Q.   And, sir, are these ESIs going to treat a  
11   condition caused by the accident on October the 26th,  
12   2007?

13      A.   Yes.

14      Q.   The last thing you have here, Dr. Lee, is  
15   surgery.  The surgery that you have there, do you  
16   believe that it's reasonable and medically necessary?

17      A.   Yes.

18      Q.   And, sir, the charge that you have there for the  
19   surgery, is that the usual and customary charge in the  
20   Houston area for that procedure?

21      A.   Yes.

22      Q.   And, sir, is that surgery going to treat a  
23   condition that was caused by Mr. Blackshire's accident  
24   on October the 26th, 2007?

25      A.   Yes.

1 Q. All right. So, sir, if we total up the numbers  
2 for past and future care, the number that we would have  
3 there is \$55,985.00?

4 A. Yes, sir.

5 Q. Dr. Lee, have you understood my questions today?

6 A. Yes.

7 Q. Thank you for your time, sir.

8 MR. PIERCE: I'll pass the witness.

9 THE COURT: Ladies and gentlemen, we're  
10 going to take our afternoon break. Be ready to come  
11 back in the courtroom at 3:30. 3:30.

12 Remember my instruction. Don't discuss this  
13 matter during any breaks. So have a nice break. I'll  
14 see you back at 3:30. You may leave the courtroom.

15 LAW CLERK: All rise.

16 THE COURT: Go ahead, right. Don't have  
17 anybody there to open the door for you. I hope they  
18 didn't lock us out. There we go. All right.

19 (Jury out.)

20 THE COURT: Court's in recess until 3:30.

21 LAW CLERK: All rise.

22 (Recess.)

23 LAW CLERK: All rise for the jury.

24 (Jury in.)

25 LAW CLERK: All rise.

1 THE COURT: Please be seated.

2 All right. Cross examination?

3 MR. MAYER: Yes, Your Honor.

4 THE COURT: All right.

5 CROSS EXAMINATION

6 BY MR. MAYER:

7 Q. Dr. Lee, my name is Zach Mayer. I represent  
8 Tyson. I'm going to be asking you a few questions,  
9 okay?

10 A. Yes, sir.

11 Q. What I'd like to do is first of all walk through  
12 some dates for you just so we're clear. The first time  
13 that you examined Mr. Blackshire was on November 6th,  
14 2009?

15 A. Yes, sir.

16 Q. Two years plus after the incident, right?

17 A. Correct.

18 Q. But you have had the opportunity to review the  
19 medical records from his prior providers?

20 A. Yes, sir.

21 Q. And in reviewing those medical records, did you  
22 determine that a CT scan was taken back in 2007?

23 A. Correct.

24 Q. Would a CT scan show a disk bulge?

25 A. Not necessarily.

1 Q. Could it, though?

2 A. It could.

3 Q. All right. Did you review the CT scan to see if  
4 the disk bulge was indicated back in 2007?

5 A. No, I did not have the actual films.

6 Q. Okay. You -- you had the report, though?

7 A. I only had the report.

8 Q. Let's take a look at the report if we could,  
9 please.

10 Now, this is the CT report that we were  
11 provided from December 3rd, 2007, true?

12 A. Yes, sir.

13 Q. And in looking at the report, is there an  
14 impression?

15 A. Yes.

16 Q. And can you read to the jury what the impression  
17 is?

18 A. Yes, sir. It states under impression: "A  
19 recent" -- I'm sorry, "a recent vertical fracture of the  
20 left LT transverse process with approximately two to  
21 three millimeter separation at the fracture line."

22 Q. And can you tell the members of the jury what a  
23 transverse process fracture is?

24 A. Yes, sir. So these -- there are two elements on  
25 both sides of the spine, and basically it is a piece of



1 bone that sticks out from the spine on both the left and  
2 right side. And this particular piece of the vertebral  
3 body on the left side sustained crack or a fracture.

4 Q. And would you agree that back in 2007, this  
5 transverse process is what the doctors were treating  
6 Mr. Blackshire for?

7 A. Yes, along with his other complaints.

8 Q. But the conservative treatment that the doctors  
9 prescribed was as a result of the findings in the CT  
10 scan, true?

11 A. True.

12 Q. And back in 2007, did you see any scan or image  
13 that indicated a disk bulge?

14 A. No. An MRI was ordered, but was never obtained.

15 Q. A disk bulge is certainly different than a  
16 transverse process, true?

17 A. Yes, sir.

18 Q. And the fracture that they were treat -- they  
19 were treating, did that eventually heal?

20 A. I assume so.

21 Q. Well, when you started treating him in 2009, you  
22 were treating him for a disk bulge and not a fracture,  
23 true?

24 A. I was treating him for his complaints of low back  
25 pain and leg pain.

1 Q. And when you took the MRI, did you see any  
2 indications or evidence of the fracture back in 2009?

3 A. No, I did not on the MRI scan.

4 Q. Is it fair to say that if you were treating him  
5 back in 2007 for this transverse process fracture, you  
6 would have treated him similarly as the doctors in East  
7 Texas did?

8 A. Yes, sir.

9 Q. You're not critical of the way that the Tyson  
10 doctors treated Mr. Blackshire, are you?

11 A. No, sir.

12 Q. Did you see in the medical records that as he was  
13 going through physical therapy, there was indication  
14 that it was helping?

15 A. Yes.

16 Q. Now, in 2009, you ordered an MRI, true?

17 A. Yes, sir.

18 Q. And your MRI indicated a disk bulge in L4-L5 and  
19 L5-S1, right?

20 A. Yes, sir.

21 Q. That's a different position in the back than L2,  
22 isn't it?

23 A. Yes.

24 Q. Now, I also see -- do you have your medical  
25 records with you?

1       A.   Yes.

2       Q.   I understand that from your testimony you had an  
3       opportunity to speak with Mr. Blackshire about his  
4       incident and injury, right?

5       A.   Yes, sir.

6       Q.   And when you talk with the patient, is it very  
7       important for you to try to get an accurate description  
8       of both what occurred and then what's going on with the  
9       patient?

10      A.   Yes.

11      Q.   And then when you get that information from the  
12      patient, do you also want to be very accurate when  
13      you're charting in your charts?

14      A.   Yes.

15      Q.   So, basically, you want to relay the information  
16      from the patient accurately into your medical records?

17      A.   Yes.

18      Q.   And I think I heard you testify that when  
19      Mr. Blackshire presented to you, he told you that he  
20      lost control of a pallet jack and he pinned himself?

21      A.   Correct.

22      Q.   And looking at your initial office visit, is part  
23      of your initial office visit to put down what he told  
24      you of the incident itself?

25      A.   Correct, yes.

1 Q. And is your record also consistent that he, being  
2 Mr. Blackshire, states that he was carrying 60 to 75  
3 pounds of -- of tubs of chicken and he lost control?

4 A. Yes.

5 Q. And you believe that you accurately charted that  
6 information in your medical records?

7 A. Based on what was told me, yes.

8 Q. Based on what Mr. Blackshire told you?

9 A. Correct.

10 Q. Now, I understand that you had then several  
11 different follow-up visits with Mr. Blackshire?

12 A. Correct.

13 Q. You indicated that Mr. Blackshire presented with  
14 radiating pain down in his legs, true?

15 A. That is what is reported, yes.

16 Q. Did you indi -- did you see back in '07 or '08  
17 that there was no indication of that radiating pain?

18 A. I -- I believe there was some indication of -- of  
19 right-sided and/or left-sided pain.

20 Q. And that was associated with that transverse  
21 process fracture -- I'll get it right.

22 A. Yes. His initial complaints were both back pain  
23 and radiating pain back in '07.

24 Q. Now, you also had the opportunity to treat him on  
25 December 22nd, 2009?

1       A. Yes, sir.

2       Q. I'm going to show you the medical record from  
3 your office on that day.

4           All right. Now, on December 22nd, 2009, when  
5 you're treating him, you referenced the disk bulge that  
6 we discussed. And then you say, "The patient was asked  
7 to see their medical care provided to rule out the  
8 possibility of nonspinal related causes for his  
9 complaints of pain." These nonspinal related causes for  
10 complaints of pain would not have anything to do with  
11 the incident at Tyson, would they?

12       A. Correct, they would not have anything to do with  
13 the incident at Tyson, correct.

14       Q. In other words -- and you're going to have to  
15 help me with some of these medical terms, but an  
16 abnormal systematic (sic) erythematic metabolic  
17 infectious process, that has nothing to do with his  
18 incident at Tyson, does it?

19       A. It does not.

20       Q. The possibility of malignancy would not have  
21 anything to do with Tyson, would it?

22       A. It should not.

23       Q. Now, you asked him to go see a medical provider  
24 to rule out these other possibilities, right?

25       A. Sure.

1 Q. Do you know if he ever did that?

2 A. I do not know.

3 Q. I understand that based upon your testimony here  
4 today, you're telling the members of the jury that  
5 surgery is probable?

6 A. Yes.

7 Q. And I know in -- in February of 2010, you saw him  
8 and -- you saw Mr. Blackshire, and you said, "At this  
9 point, I do not believe he would require surgical  
10 intervention," true?

11 A. Yes.

12 Q. And then also in March of 2010, looking again at  
13 your medical records, you say, "I do not foresee  
14 surgical intervention in the near future," true?

15 A. Yes, in -- in the near future, correct.

16 Q. And then once again, I guess, as -- as recently  
17 as August 13th, 2010, you state in there that "Surgery  
18 is not indicated at this time." You see that?

19 A. Yes. At this time, but as that note points out,  
20 he may need future imaging studies and potentially  
21 eventual medical and/or surgical care.

22 Q. And -- and I understand that's your testimony.  
23 Would you agree with me, Doctor, though, is if the  
24 medication or the physical therapy that you prescribe  
25 helps his condition, then surgery might not be

1     necessary?

2           A.   It might not, correct.

3           Q.   And if those steroid injections that you're  
4     recommending, if those help to subside the pain, surgery  
5     also might not be necessary?

6           A.   Correct.

7           Q.   And based upon your medical records, at least at  
8     this time, you are not indicating surgery for  
9     Mr. Blackshire?

10          A.   Not based upon my last visit, but as I mentioned  
11     earlier, his symptoms had persisted and so further  
12     workup may be necessary.

13          Q.   And -- and you would agree that in the past,  
14     his physical therapy actually helped his condition,  
15     right?

16          A.   Yes, sir, it did.

17          Q.   All right. And -- and you said, although I  
18     believe that the -- the steroid injections, he had a  
19     negative response to those initially?

20          A.   Yeah, he reported some nausea and vomiting for  
21     about four days or so, but that resolved.

22          Q.   But those also helped his condition?

23          A.   The injections did help him, yes, sir.

24          Q.   And if those helped the condition, then, ideally,  
25     surgery would not be necessary?

1       A. Ideally, but so far, it has not solved his -- his  
2 symptoms yet.

3       Q. Do you know -- and I noticed -- noticed in this  
4 last medical record, as well, it says that, again, "The  
5 patient was asked to see their medical care provider to  
6 rule out the possibility of all of those lists of  
7 medical issues again." This was as re -- recent as  
8 August 13th, this -- this month, true?

9       A. Correct. I do that as a standard recommendation  
10 to ensure that nothing is missed.

11      Q. And would you agree that any of those issues,  
12 again referenced in August of this year, would not be  
13 related to Tyson?

14      A. Correct. They would not be related to Tyson,  
15 correct.

16      Q. Do you know if he has followed up to -- to  
17 possibly rule out any of those other medical conditions?

18      A. I am not aware.

19               MR. MAYER: Sir, I believe that's all the  
20 questions I have. I appreciate your time here today.

21               THE WITNESS: Thank you.

22               THE COURT: Sir, any redirect?

23               MR. PIERCE: Yes, sir, very briefly.

24                       REDIRECT EXAMINATION

25 BY MR. PIERCE:



1       Q. Dr. Lee, you were asked some questions about  
2       conservative treatment that Mr. Blackshire received  
3       early on. Do you recall those questions?

4       A. Yes, sir.

5       Q. Now, the questions were all couched in terms of  
6       conservative treatment for his vertebral fracture, and I  
7       want to ask you about that.

8               Is the treatment Mr. Blackshire received for  
9       his vertebral fracture the same type of conservative  
10      treatment you would give him for bulging disks?

11      A. No.

12      Q. Okay. Tell me how it's different.

13      A. Well, usually for a simple fracture like a  
14      transverse fracture which he had, it's -- it's simple  
15      treatment. It usually will heal on its own. For a  
16      bulging disk, instead of a CT scan, which simply looks  
17      at the bone, the physician usually will order either a  
18      CT myelogram, which is a more detailed study which will  
19      enable one to actually visualize the nerves, or an MRI  
20      study, which was not done at that time.

21      Q. And just to be clear, Doctor, even back then when  
22      Mr. Blackshire was seeing these doctors from Tyson,  
23      there was discussion ordering MRIs; is that right?

24      A. Yes. Actually, Dr. Kerr over at the Louisiana  
25      Spine Institute actually ordered the MRI of the lumbar

1 spine.

2 Q. Okay. And then based on the MRI you reviewed,  
3 you actually found a bulging disk; is that right?

4 A. Yes, sir.

5 Q. Okay. I want to ask you a question about the  
6 history that you took from Mr. Blackshire. Now, you  
7 recall being asked some questions about you taking a  
8 history from him?

9 A. Yes, sir.

10 Q. Now, this is the section opposing counsel read to  
11 you, and I want to go through it verbatim because I -- I  
12 may be missing something. It says, "He states that a  
13 jack carrying 65 to 75 -- or 70 pound tubs of chickens  
14 lost control"; is that right?

15 A. Yes, sir.

16 Q. Does it say anything in there about  
17 Mr. Blackshire lost control?

18 A. No, he simply reported that pallet -- this was  
19 supposed to be pallet jack, but the dictation -- it just  
20 simply lost control of the pallet jack.

21 Q. Okay. Now, sir, there were some questions asked  
22 of you -- oh, let me back up.

23 You have seen medical records from a number of  
24 different providers, including from the emergency room  
25 where Mr. Blackshire received treatment for conditions

1 not related to his back; is that right?

2 A. Yes.

3 Q. Okay. Have you ever seen anything in a single  
4 medical record that you've been presented with that  
5 indicates that there's a nonspinal cause for his pain?

6 A. No.

7 Q. Let me ask you -- opposing counsel pointed out  
8 that note from your records. Why do you put that in  
9 there?

10 A. Well, I want to be a -- a thorough and complete  
11 physician. I'm only a spine surgeon. I can't rule out  
12 for sure that -- you know, the last thing I would want  
13 to do is miss a tumor or miss any other  
14 nonspinal-related cause for his pain, so I refer him to  
15 a generalist to make sure I'm not missing those other  
16 factors that I'm not an expert in.

17 Q. And, sir -- and based on what you have, there's  
18 nothing -- there's no nonspinal cause that would explain  
19 the pain that he's having, correct?

20 A. Correct.

21 Q. Let's -- let's talk about this. You were asked  
22 some questions about this where you talk about future  
23 care.

24 A. Yes.

25 Q. Medication. Mr. Blackshire has been on

1 medication off and on for three years, correct?

2 A. Yes, sir.

3 Q. Are his symptoms gone?

4 A. They're still present.

5 Q. Is he totally healed?

6 A. Not yet.

7 Q. ESIs. Mr. Blackshire's had one round of ESIs,  
8 correct?

9 A. Correct.

10 Q. Are his symptoms totally gone?

11 A. Not yet.

12 Q. Is he totally healed?

13 A. Not yet.

14 Q. Physical therapy. He's had at least two courses  
15 of physical therapy.

16 A. Correct.

17 Q. Are his symptoms gone?

18 A. Not yet.

19 Q. Is he totally healed?

20 A. Not yet.

21 Q. You talk about surgery right there. And, Doctor,  
22 I want to ask you, just to be clear, is it your opinion,  
23 more probable than not, that Mr. Blackshire's condition  
24 is going to require this surgery in the future?

25 A. I would say more probable than not, given the

1 fact that it has not healed over the past three years  
2 and he's gone through some of the conservative treatment  
3 measures already.

4 MR. PIERCE: That's all I have, Your Honor.  
5 I'll pass the witness.

6 MR. MAYER: Nothing further, Your Honor.

7 THE COURT: Okay. You may step down,  
8 doctor.

9 THE WITNESS: Thank you.

10 THE COURT: Who'll be the plaintiff's next  
11 witness?

12 MR. PIERCE: Your Honor, at this time, the  
13 plaintiff rests.

14 THE COURT: Okay. Counsel approach.

15 (Bench conference.)

16 THE COURT: You got your witnesses here?

17 MR. MAYER: Yes, Your Honor.

18 THE COURT: Okay. Can we have an agreement  
19 on the record that we'll go -- that he can -- he can  
20 make his motion that he wishes to make, a Rule 50 motion  
21 not now, but later in the day and it be deemed as timely  
22 made?

23 MR. PIERCE: Yes, sir, that's agreeable to  
24 plaintiff.

25 THE COURT: I'll just say we'll go ahead and

1 work the jury until about -- close to around 5:00, and  
2 then we'll take up that motion then at 5:00. Just  
3 remind me.

4 MR. MAYER: Yes, Your Honor, don't you  
5 worry.

6 THE COURT: Well, I've heard that before,  
7 and then I get embarrassed.

8 MR. MAYER: Okay.

9 (Bench conference ended.)

10 THE COURT: All right. Who'll be the  
11 defendant's first witness?

12 MR. MAYER: Your Honor, at this time, the  
13 defendants call Patricia Williams to the stand, and she  
14 is out in the hall.

15 THE COURT: Okay.

16 MR. PIERCE: Your Honor, may Dr. Lee be  
17 excused from the courtroom?

18 THE COURT: Any objection, Mr. Worthington?

19 MR. WORTHINGTON: No objection, Your Honor.

20 THE COURT: You're excused, Dr. Lee. Thank  
21 you for coming. Travel safely.

22 THE WITNESS: Thank you.

23 (Witness sworn.)

24 THE COURT: Proceed.

25 MR. MAYER: Thank you, Your Honor.

1 PATRICIA WILLIAMS,  
2 having first been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MAYER:

5 Q. Ma'am, would you please state your name for the  
6 record?

7 A. Patricia Williams.

8 Q. Ms. Williams, will you introduce yourself to the  
9 jury? Just tell them a little bit about where you were  
10 born and where you were raised.

11 A. My name is Patricia Williams. I was born in  
12 Marshall, Texas, and I was raised in Waskom, Texas. I  
13 have three girls, and I have a husband. And I've been  
14 working for Tyson for 20-plus years.

15 Q. And can you tell the members of the jury, over  
16 the 20 years, what have been your different job  
17 responsibilities? Kind of give us an overview, if you  
18 would.

19 A. Okay. I have mostly managed people in my  
20 department, make sure that our lines run correctly or  
21 make sure that absenteeism...

22 I facilitate with different products to get  
23 to the stores when we run chicken and some press line  
24 supervisor.

25 Q. I don't think that we have actually described

1    what type of plant the Carthage plant is.  What -- what  
2    do you do there?

3       A.  It's a processing plant.  And where we -- what we  
4    do is that when they kill the chicken, we -- my  
5    department distributes the birds to each other  
6    department, which when we get through distributing the  
7    birds to each department, it's different sides it's  
8    because birds are different sizes.  And we also do  
9    cut-up for KFC, Popeye's, and Church's.

10       Q.  Now, can you tell the members of the jury what  
11    your specific job responsibilities are currently?  What  
12    are you doing now?

13       A.  I work in a department called packing and  
14    overhead, and we pack the chickens, and we distribute  
15    to each of our departments to make sure that our  
16    customers have the right size bird and a good quality.

17       Q.  I want to go back to October of 2007.  What was  
18    your job responsibilities at that time?

19       A.  Managing the packing and overhead.

20       Q.  Okay.  Pretty much the same responsibilities you  
21    have now?

22       A.  Yes, sir.

23       Q.  And back in October of '07, did you have the  
24    occasion to work with Mr. Blackshire?

25       A.  Yes, sir.



1 Q. And tell me, first of all, in what capacity did  
2 you work for him -- work with him, excuse me?

3 A. Oh, he came to me from the night shift. He  
4 transferred from the night shift to me to work on my  
5 stack-off line, slash, jack operator. Any time we get  
6 an employee that can do two jobs which they're  
7 trained for, then we'll use them occasionally to do a  
8 job.

9 Q. That brings up a good point. You said that  
10 Mr. Blackshire was a pallet jack operator. Are you  
11 familiar with what type of certification process Tyson  
12 requires before they'll allow a team member to work a  
13 pallet jack?

14 A. Yes, sir. Each supervisor can visually watch the  
15 team member control the pallet jack, and then they're  
16 given a test, a video that goes over the safety  
17 department. And after the test, they determine whether  
18 they get the jack license or not.

19 Q. Now, are you familiar with the test well enough  
20 to say it is written or verbal?

21 A. No.

22 Q. Okay. Don't know one way or the other?

23 A. No.

24 Q. Okay. Fair enough. But you know that before a  
25 pallet jack operator ever gets released to your line, do

1     they have to be certified?

2         A.   Yes, they do.

3         Q.   And then once they're certified, do you have any  
4     job responsibilities over that pallet jack operator?

5         A.   Just make -- mostly just make -- make sure they  
6     maintain the safety, doing all the safety things that  
7     are necessary with that jack.

8         Q.   Was Mr. Blackshire certified to operate a pallet  
9     jack back in October of 2007?

10        A.   Yes, he was.

11        Q.   On October 26th, 2007, that's the day that the  
12     alleged incident occurred, on that day, did you ask  
13     Mr. Blackshire to operate the pallet jack?

14        A.   Yes, sir, I did.

15        Q.   Can you tell me the circumstances around that?

16        A.   Whenever I have any employee that's absent and  
17     another employee knows how to do a job, then I will ask  
18     them to perform that job.

19        Q.   Now, go ahead, did you ask Mr. Blackshire to  
20     perform that job?

21        A.   Yes, I did.

22        Q.   When you asked him to -- to operate the pallet  
23     jack, did he raise any objections or concerns?

24        A.   No, sir, he did not.

25        Q.   All right. Are you familiar with what type of

1 inspection an operator must do before they can operate  
2 the pallet jack?

3 A. They're supposed to visually -- they're supposed  
4 to clean the jacks first. Then if anything is wrong  
5 with that jack, they're supposed to report it to me then  
6 so I can make -- make sure maintenance know and get it  
7 taken care of, and then I'll get them another jack to  
8 use.

9 Q. In October -- on October 26th, 2007, when you  
10 asked Mr. Blackshire to operate that pallet jack, had  
11 anyone reported to you any problems with the pallet jack  
12 that Mr. Blackshire was operating?

13 A. No, they did not.

14 Q. After Mr. Blackshire started to operate the  
15 pallet jack, right at first, did he express any concerns  
16 or objections on how it was functioning?

17 A. No, he did not.

18 Q. And on October 26th, 2007, were you made aware of  
19 any malfunction in the pallet jacks?

20 A. No, sir, I did not.

21 Q. All right. What was the next thing that you  
22 heard from Mr. Blackshire?

23 A. The next thing in the midpart of the day, he had  
24 mentioned to me that he had pinned himself up against  
25 the pole with the jack and that he had hurt his back.

1       Q. All right. So I want you to be as detailed as  
2 possible on what he told you about what occurred.

3       A. He said he was backing up with the jack and he  
4 pinned himself up against the pole. And I told him  
5 that, you know, that he needed to go to the nurse. I  
6 always tell them, "If you get to hurting, go to the  
7 nurse as soon as possible," because we practice safe  
8 practice out there.

9       Q. Did -- did Mr. Blackshire tell you that he had  
10 stepped away from the pallet jack?

11      A. No, he never said he stepped away from it.

12      Q. Did he tell you that he had let go of the handle  
13 and it accelerated into him?

14      A. No, he did not.

15      Q. All right. What you just told us, was that  
16 everything that you can recall about what Mr. Blackshire  
17 told you?

18      A. Yes, sir.

19      Q. And so after he reported the incident, you said  
20 you sent him to the nurse?

21      A. Uh-huh.

22      Q. Did you have any additional follow-up with  
23 Mr. Blackshire on that day?

24      A. That day I did ask him later on up in the day was  
25 he okay. He said, "Well, I'm -- I'm going to make it."

1 And that's what he did through the rest of the day. And  
2 so after that, I never seen him any more about that.

3 Q. Throughout the remainder of the shift, did he  
4 ever raise any concern to you about how the pallet jack  
5 was operating?

6 A. No, he did not.

7 Q. Did he tell you that the pallet jack was  
8 malfunctioning in any way?

9 A. No. I would have never let him operate a pallet  
10 jack that was malfunctioning.

11 Q. What do you mean by that?

12 A. I would have never allowed him to use the jack if  
13 it would hurt him in any way.

14 Q. If -- if you would have been made aware of any  
15 type of incident where the pallet jack accelerated into  
16 employees -- first of all, had you ever been aware of  
17 that type of incident?

18 A. Never.

19 Q. What would you have done if you would have been  
20 informed of that type of occurrence?

21 A. I would have immediately told him to leave that  
22 jack where -- wherever he had -- was working with it at,  
23 and I would have called maintenance and told maintenance  
24 to come get the jack and tell him to get -- get another  
25 jack.

1       Q. Did you have the availability of other jacks to  
2 work on at the same time?

3       A. Yes, we could use another jack from the  
4 department.

5       Q. Now, I understand -- were you his supervisor that  
6 day?

7       A. Yes, I was.

8       Q. All right. So because of that, did you also have  
9 the occasion to review the employee's initial report of  
10 injury?

11      A. Yes, I can review them.

12      Q. Okay. And is this -- you see up top here where  
13 it says, "supervisor," and it's "Patricia Williams"? Do  
14 you see that?

15      A. Yes, sir, I see it.

16      Q. All right. That -- that's you?

17      A. Uh-huh.

18      Q. And then where it says, "Describe what you were  
19 doing when the accident occurred," it says, "Driving the  
20 jack"?

21      A. Uh-huh.

22      Q. Now, is that consistent what Mr. Blackshire told  
23 you?

24      A. Yes, he was driving the jack.

25      Q. And then it -- it goes on and it says,

1 "Describe how the accident occurs," and it says,  
2 "Driving the jack, backing it up against pole, and jack  
3 ran and pinned him against the pole."

4 A. Uh-huh.

5 Q. Do you see that?

6 A. Yes, sir, I see it.

7 Q. And is that similar to the description that  
8 Mr. Blackshire gave you on --

9 A. It's similar, yes, sir.

10 Q. All right. Now, after October 26th when  
11 Mr. Blackshire finished his shift, did you have an  
12 occasion to work with him ever again?

13 A. No, I did not.

14 Q. Did you have an occasion to see Mr. Blackshire  
15 ever again?

16 A. Yes, sir, I did.

17 Q. Where did you see him?

18 A. I would see him in the locker area of the plant  
19 or in the break room.

20 Q. Did you ever see -- have an occasion to see him  
21 outside of your work with Tyson?

22 A. Yes, sir, I did.

23 Q. Where did you see him?

24 A. I seen him at a party, a birthday party.

25 Q. All right. And did you observe Mr. Blackshire at

1     that time?

2           A.   Well, yeah -- but, no, I was looking at him,  
3     and -- and he was turned around like this talking to  
4     some other guys at the party.

5           Q.   All right. Did he appear to be injured at that  
6     time?

7                   MR. PIERCE: Your Honor, I'm going to  
8     object. It calls for speculation.

9                   THE COURT: Restate your question. I don't  
10    think she can -- I sustain it as asked.

11                   MR. MAYER: Okay.

12           Q.   (By Mr. Mayer) Ms. Black -- Ms. Williams, you  
13    saw Mr. Blackshire turn completely around in his chair?

14           A.   Yes, he turned around in the chair.

15           Q.   Did you see him do anything else that day?

16           A.   During the night, I saw -- I appeared to see him  
17    dancing, but other than that, that was it because I left  
18    after that.

19           Q.   And was that the last time that you saw  
20    Mr. Blackshire?

21           A.   Yes, sir.

22           Q.   All right. Ms. Williams, I appreciate your time  
23    here today.

24                   MR. MAYER: We'll go ahead and pass the  
25    witness.



1 THE COURT: All right. Cross examination?

2 MR. PIERCE: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MR. PIERCE:

5 Q. Ms. Williams, you and I have never met before.

6 My name is Michael Pierce. I represent Mr. Blackshire.

7 It's nice to see you this afternoon.

8 A. Nice to see you, too, sir.

9 Q. I'm going to -- I'm going to do my best to be  
10 brief with you, okay?

11 A. Okay.

12 Q. You did not actually see Mr. Blackshire's  
13 accident happen, correct?

14 A. No, I did not.

15 Q. Based on own your personal knowledge, based on  
16 your own personal observations, you can't tell us what  
17 happened, correct?

18 A. I can tell you what he said happened.

19 Q. And -- and let me be clear with my question. I'm  
20 talking about what you observed with your own eyes. You  
21 can't tell us what happened because you didn't see it,  
22 right?

23 A. That's right.

24 Q. Let me ask you -- I'm going to backtrack and ask  
25 you about something that Tyson's lawyer asked you about.

1 That accident report that was filled out, the one you  
2 were just looking at?

3 A. Yes.

4 Q. Were you with Mr. Blackshire when he filled that  
5 out?

6 A. No.

7 Q. Okay.

8 A. Just the nurse.

9 Q. All right. Do you remember when's the first time  
10 you ever saw that document?

11 A. Just then.

12 Q. You've never seen it before today?

13 A. No, I haven't seen it.

14 Q. Okay. Let's talk about pallet jacks in general  
15 for just a minute, okay?

16 A. Okay.

17 Q. You've never actually operated a pallet jack  
18 yourself; is that right?

19 A. No, sir.

20 Q. You don't know anything about the maintenance or  
21 the inspection of pallet jacks back at the time this  
22 accident took place, correct?

23 A. No, sir, just visual.

24 Q. Okay. You don't know how often pallet jacks have  
25 to be serviced, correct?

1       A.  No, sir, I do not.

2       Q.  You don't know what types of service they  
3 receive; is that correct?

4       A.  No, sir, I do not.

5       Q.  You don't know if there are any records kept of  
6 maintenance or inspection of pallet jacks, correct?

7       A.  No, sir, I do not.

8       Q.  You can't tell us as you sit here today under  
9 oath when the last time it was that this particular  
10 pallet jack had either been inspected or had  
11 maintenance, correct?

12      A.  No, I could not tell you.

13      Q.  And, Ms. Williams, you -- obviously, you did not  
14 operate this particular pallet jack on the date of the  
15 accident, correct?

16      A.  No, I do not operate pallet jacks.

17      Q.  Okay.  And, obviously, you did not inspect this  
18 particular pallet jack on the date of the accident,  
19 correct?

20      A.  No.  Each individual inspects their own pallet  
21 jacks before they use them.

22      Q.  Let me back up, and I want to be clear.  I'm just  
23 asking about you right now.  On the date of this  
24 accident, did you personally inspect the pallet jack  
25 involved in Mr. Blackshire's accident?

1 A. No, sir.

2 Q. Okay. Let's talk about Mr. Blackshire generally  
3 just for a minute, okay?

4 A. Yes.

5 Q. Okay. He was certified to operate a pallet jack,  
6 correct?

7 A. Yes, sir.

8 Q. Let's talk about what all that means. He had had  
9 to watch y'all's video, right?

10 A. Yes, he would.

11 Q. He would have to take some kind of test whether  
12 it was written or verbal, correct?

13 A. Yes, sir, he should.

14 Q. As far as Tyson was concerned, this man was safe  
15 operating a pallet jack, correct?

16 A. Yes, sir.

17 Q. You actually observed him personally operating a  
18 pallet jack before this accident, correct?

19 A. Yes, sir.

20 Q. Okay. You thought he was safe?

21 A. He's a good -- he was a good driver.

22 Q. You had no concern about the way this gentlemen  
23 operated a pallet jack, correct?

24 A. No, sir.

25 Q. All right. Now, Tyson has some policies about

1    how you should operate pallet jacks.  They have some  
2    rules about it, don't they?

3       A.  Yes, sir.

4       Q.  Okay.  Now, let me ask you something.  If -- if  
5    Mr. -- if what you said on direct examination is  
6    correct, if Mr. Blackshire comes up to you as his  
7    supervisor and says, "Hey, Ms. Williams, I was running  
8    this pallet jack and, darn it, I pinned myself up  
9    against the wall" --

10      A.  Uh-huh.

11      Q.  -- that indicates to you he's probably not doing  
12    it, right, huh?

13      A.  No, he's not.

14      Q.  Okay.  And if he's not doing it right, it's your  
15    responsibility as his supervisor to make sure he's doing  
16    it safely, correct?

17      A.  Yes, sir.

18      Q.  Okay.  I want to show you a document that Tyson's  
19    lawyers gave to us.  I'm going to -- I'm going to back  
20    up.  Can you see this okay?

21      A.  Okay.

22      Q.  And can you read what it says up here at the top?

23      A.  "Carthage, Texas, Processing Plant, Forklift and  
24    Pallet Jack, Driving Rules and Operation Policies."

25      Q.  Okay.  Had you ever seen this before?

1       A.  No, sir.

2       Q.  Never seen it before?

3       A.  No, sir.

4       Q.  Okay.  Let's talk about it.  There's a section I  
5 just drew a little blue box around.  Can you see that  
6 section?

7       A.  Yes, sir, I see it.

8       Q.  Can you read that out loud for me?

9       A.  It says, "Disciplinary action will be taken if  
10 after investigation it is determined that the operator  
11 violates any safety operation rules or policy, whether  
12 an accident, slash, incident occur or not."

13      Q.  Okay.  Let's -- let's talk to the jury about this  
14 for just a second.

15      A.  Okay.

16      Q.  If what Mr. Blackshire -- if what you've  
17 testified to on direct examination is correct and  
18 Mr. Blackshire told you that he had pinned himself up  
19 against a pole running one of these pallet jacks, you've  
20 already agreed with me that's not safe, right?

21      A.  No, it isn't.

22      Q.  Okay.  According to this policy, if he is  
23 violating operator rules for this pallet jack and doing  
24 something unsafe, he's subject to disciplinary action,  
25 correct?  We just read that.

1 A. Yes.

2 Q. Okay. Now, ma'am, I'm going to tell you, I've  
3 looked at all the documents that Tyson's given me. I've  
4 never seen that any type of disciplinary action was  
5 taken against this man as a result of this accident. Do  
6 you know if that's right or wrong?

7 A. No -- no disciplinary action was ever taken.

8 Q. I want to go back to the day of the accident for  
9 just a minute.

10 A. Okay.

11 Q. Now, Ms. Williams, that was -- that was almost  
12 three years ago.

13 A. Yes, sir, I know.

14 Q. It's a long time?

15 A. It's a long time.

16 Q. All right. There's some things you don't  
17 remember about what happened three years ago, right?

18 A. Yeah.

19 Q. Just like all of us?

20 A. Uh-huh.

21 Q. Let's talk about some things that you don't  
22 remember. Do you remember giving a deposition in this  
23 case?

24 A. Yes, I remember that.

25 Q. Do you remember that at the time of your

1 deposition, you couldn't even tell us whether on the  
2 date of this accident Mr. Blackshire was primarily a  
3 line worker or whether he was primarily a pallet jack  
4 operator?

5 MR. MAYER: Objection, Your Honor, that's  
6 improper cross examination.

7 MR. PIERCE: Your Honor, I'm just asking at  
8 the time if she remembered it.

9 A. No, sir, I couldn't remember --

10 THE COURT: Wait, wait just a minute,  
11 don't --

12 MR. PIERCE: I'm not.

13 THE COURT: I overrule the objection.

14 Q. (By Mr. Pierce) Ms. Williams, do you need me to  
15 repeat my question?

16 A. No, sir. At the time, I couldn't remember.

17 Q. Okay. And let's just -- let's give the jury an  
18 idea of kind of the dates that you and I are talking  
19 about here. Let's see if I can get this right.

20 Ms. -- Ms. Williams, I'll represent to you  
21 that your deposition happened on June the 2nd of 2010.  
22 Do you remember if that's right or wrong?

23 A. I think that's correct.

24 Q. Okay. I'm going to zoom this out a little bit.  
25 My handwriting is pretty bad. I've got the date of the



1 accident -- actually, I put the wrong date -- 10/26/07.  
2 The date of your deposition was June 2nd, 2010; is that  
3 right?

4 A. Yes, sir.

5 Q. Now, let's -- let's go back to what you  
6 remembered on the date of your deposition. You already  
7 told me you couldn't remember if Mr. Blackshire was  
8 primarily a line worker or a pallet jack operator,  
9 correct?

10 A. Correct.

11 Q. At the time of your deposition, you couldn't even  
12 remember the names of the pallet jack operators who  
13 worked under you. Do you remember that?

14 A. I remember that, yes, sir.

15 Q. Okay. At the time of your deposition, you were  
16 asked and you could not remember if you had even spoken  
17 with Mr. Blackshire on the morning of his accident. Do  
18 you remember that?

19 A. It was not a morning. It was at midshift. It  
20 was not in the morning time. The accident didn't happen  
21 in the morning.

22 Q. Okay. Let me be clear about what I'm asking you.  
23 I'm not asking you about the accident itself.

24 A. Okay.

25 Q. What I'm asking you is on the morning of his

1 accident --

2 A. Uh-huh.

3 Q. -- the morning of that day on October the 26th at  
4 the time of your deposition, you couldn't remember one  
5 way or the other if you had even talked to him; is that  
6 right?

7 A. Yeah, I had to talk to him to tell him that -- to  
8 operate the jack.

9 Q. Okay. Just to be clear, let me ask you, do you  
10 remember talking to him at all when he showed up for  
11 work that morning?

12 A. Yes.

13 MR. PIERCE: Your Honor, may I approach the  
14 witness?

15 THE COURT: Yes.

16 MR. PIERCE: Counsel, Page 21, Lines 5 to 7.

17 Q. (By Mr. Pierce) Ms. Williams, I only got one  
18 copy, so I'll have to invade your --

19 A. Okay.

20 Q. -- space a little bit here. I've got a lot of  
21 markings on it. But I want to show you where I'm  
22 reading.

23 A. Okay.

24 Q. It's Page 21 --

25 A. All right.

1 Q. -- Line 5. The question was: "Do you remember  
2 talking to him at all when he showed up for work that  
3 morning?"

4 Answer --

5 A. "No."

6 Q. Okay. And, Ms. Williams, just to be clear for  
7 the jury, at the time you gave your deposition, you were  
8 under oath just like you're under oath today; is that  
9 right?

10 A. Yes, sir.

11 Q. And you told the truth, correct?

12 A. Yes, sir.

13 Q. And your best memory on that date was you didn't  
14 know if you talked to him or not?

15 A. No.

16 Q. Now, on -- on direct examination, the lawyer for  
17 Tyson talked to you about having this conversation with  
18 Mr. Blackshire where you were asking him to fill in as  
19 the pallet jack operator on the morning of his accident,  
20 correct?

21 A. Yes, sir.

22 Q. And the truth is back when we took your  
23 deposition, you didn't remember that conversation at  
24 all, correct?

25 A. I didn't remember it, no.

1       Q.   Okay.  Now, Ms. -- Ms. Williams, you told me  
2   before you were not with Mr. Blackshire when he  
3   completed his accident report; is that right?

4       A.   No, sir, I was with him.

5       Q.   Okay.  And, in fact, you told us that you hadn't  
6   even seen that document before today; is that right?

7       A.   No, sir, I hadn't seen it.

8       Q.   Okay.  If -- if Mr. Blackshire's testimony in  
9   this case is correct, if this jack really did run at  
10  him --

11      A.   Uh-huh.

12      Q.   -- would it be proper for him to tell somebody  
13  about that?

14      A.   Yes, he would have to tell somebody if a jack run  
15  at you.

16      Q.   Okay.  And if the jack ran at him and he told  
17  somebody, let's say that he told Ms. Gatlin when he was  
18  filling out his report --

19      A.   Uh-huh.

20      Q.   -- would it be proper for her to write it down?

21      A.   Yes, she would write it down.

22      Q.   Okay.  Now, Ms. Williams, you don't know one way  
23  or the other whether this accident ever got reported to  
24  the maintenance department, correct?

25      A.   No, sir, I don't know.

1       Q. And, Ms. Williams, you don't know one way or the  
2 other whether this accident ever got reported to the  
3 safety department, correct?

4       A. No, sir, I don't know.

5       Q. And, Ms. Williams, you told us at the time of  
6 your deposition that you think it should have been  
7 reported?

8       A. Yes, sir, it should have.

9       Q. But you don't know if it was?

10      A. No, sir, I don't know.

11      Q. And you would agree with me that if this jack ran  
12 at Mr. Blackshire, first, he should have told somebody  
13 about it, correct?

14      A. Yes, sir.

15      Q. And then when he told somebody that the jack ran  
16 at him, they should have written it down?

17      A. Yes, sir.

18               MR. PIERCE: That's all I have. I'll pass  
19 the witness.

20               MR. MAYER: Very brief, Your Honor.

21               THE COURT: Redirect?

22                       REDIRECT EXAMINATION

23 BY MR. MAYER:

24      Q. Ms. Williams, have you ever heard of a jack  
25 running at -- running someone down?

1       A. No, sir, I never heard of a jack running someone  
2 down.

3       Q. Has that ever been reported to you by  
4 Mr. Blackshire?

5       A. No, sir.

6       Q. Has that ever been reported to you by any other  
7 employee there at Tyson?

8       A. No, sir. A jack can't run you down. You have to  
9 control the jack.

10      Q. After -- after this incident, was that jack still  
11 operated?

12      A. Yes, sir.

13      Q. And did anyone else after the incident tell you  
14 that it was malfunctioning?

15      A. No, sir.

16               MR. MAYER: That's all I have. Thank you,  
17 Your Honor. No further questions.

18               MR. PIERCE: Your Honor, may I ask just a  
19 very, very brief --

20               THE COURT: Okay. We're not going to get  
21 into a ping-pong match.

22               MR. PIERCE: This is all I've got, Your  
23 Honor.

24                               RE CROSS EXAMINATION

25 BY MR. PIERCE:

1       Q. Ms. Williams, I just want to ask you, you were  
2       asked some questions about what happened with this jack  
3       after the accident. Do you know how long Tyson kept  
4       this jack?

5       A. No, sir, I'm not aware of how long they kept the  
6       jack.

7       Q. After this accident, do you know when the next  
8       time came that Tyson would have inspected or performed  
9       maintenance on this jack?

10      A. No, sir, I'm not aware of maintenance.

11               MR. PIERCE: That's all I have, Your Honor.

12               MR. MAYER: Nothing further, Your Honor.

13               THE COURT: All right. You may step down.

14               When I use the word "ping-pong," sometimes  
15       lawyers will just go back and forth one more question,  
16       one more question. That's what I meant by that. The  
17       lawyers understood. Maybe I should have explained that  
18       to the jury.

19               Who'll be your next witness?

20               MR. MAYER: At this time, we'll call Larry  
21       Howard to the stand.

22               THE COURT: All right.

23               MR. MAYER: He's also out in the hallway.

24               THE COURT: Okay.

25               (Witness sworn.)

1                               LARRY HOWARD,  
2   having first been duly sworn, testified as follows:

3                               DIRECT EXAMINATION

4   BY MR. MAYER:

5       Q.   Sir, will you please introduce yourself to the  
6   jury?

7       A.   I'm Lawrence Howard.

8       Q.   Mr. Howard, can you tell the members of the jury  
9   a little bit about your upbringing, where were you born  
10   and where were you raised?

11      A.   Okay.   Born in Amarillo, Texas.   Grew up in  
12   California on a farm, and spent 20 years in the Air  
13   Force after that and retired from the Air Force.   And  
14   I've been working plant maintenance, industrial  
15   maintenance for about 20 years.

16      Q.   Now, when you were in the Air Force, did you have  
17   an occasion to do maintenance work, as well?

18      A.   Yes.   I was an aircraft mechanic and aircraft  
19   maintenance supervisor.

20      Q.   Can you tell us a little bit about your training  
21   and your job responsibilities in the Air Force?

22      A.   I went through about 20 weeks of technical  
23   school, electrical training, pneumatics, hydraulics,  
24   fluid power, elec -- electronic and electrical, both  
25   on -- all on aircraft and ground equipment.



1       Q. Now, once you left the Air Force, you said you  
2       went into machine maintenance?

3       A. Industrial-type plant maintenance.

4       Q. Can you walk us through your job history up  
5       until the time that you were hired by Tyson, an  
6       overview?

7       A. Okay. I worked for Louis Rich Poultry Products  
8       or Louis Rich Turkey in California for 10 years as a  
9       maintenance supervisor, maintenance manager, and a -- I  
10      can't think of the other name they had for it. Anyway,  
11      I was over all the maintenance management there.

12               After Louis Rich, I went to a creamery in  
13      Tulare, California. I was maintenance manager there,  
14      and at the time, it was the biggest creamery operation  
15      in the world. Worked there a couple of years, and  
16      wanted to move, so I moved to Stephenville, Texas.

17               Worked in Stephenville, Texas, at a cheese  
18      plant for approximately two years and the plant closed.  
19      This makes me think that I'm a bad omen or something.

20               Left that plant, moved to Memphis,  
21      Tennessee, for Sonoco Products, a packaging company. I  
22      worked with the -- Sonoco Products as maintenance  
23      manager in a metal end plant -- make the metal ends for  
24      biscuit cans.

25      Q. They didn't go under, did they?

1       A.   Pardon?

2       Q.   They didn't go under, did they?

3       A.   No.

4       Q.   Okay.   Good.

5       A.   I request -- I requested that they transfer me,  
6   after I'd been there about five years, to another Sonoco  
7   plant because I wanted to get back to Texas.   So they  
8   moved me to Denison, Texas, Sonoco Pillsbury Plant, and  
9   after about 10 months, Pillsbury closed their plant  
10   down.   You don't need to make cans if there's no  
11   biscuits to put in them.

12               So Sonoco then moved me to Charlotte, North  
13   Carolina, and I was maintenance manager there in a  
14   printing plant or folded carton plant.   Makes small  
15   cartons like the hard cigarette pack cartons and Fuji  
16   film carton, things of that nature.

17       Q.   When were you hired by Tyson?

18       A.   Right after Sonoco in Charlotte, North Carolina.

19       Q.   All right.   And what year was that?

20       A.   2006.

21       Q.   And you moved down to the Carthage area?

22       A.   Yes, I moved to Carthage for the job.

23       Q.   What was your job responsibilities when you were  
24   hire -- hired there at Tyson plant?

25       A.   Maintenance manager.

1       Q. What does that mean? Can you explain what you're  
2 over and -- and what you do?

3       A. Maintenance -- maintenance manager at this plant  
4 is responsible for maintenance of all plant equipment,  
5 forklifts, refrigeration, the building itself, the  
6 grounds, the garbage man, the offal by-products from the  
7 chickens, making sure that those are graded and shipped  
8 out, basically, the -- the whole facility and everything  
9 on the grounds.

10      Q. What I want to do is narrow our questions to  
11 pallet jacks. First of all -- first of all, do you have  
12 any experience operating pallet jacks?

13      A. Yes, I do. I have operated pallet jacks before.

14      Q. And -- and have you been certified as an operator  
15 of a pallet jack?

16      A. Yes, I have.

17      Q. Gone through that course?

18      A. Yes.

19      Q. And are you generally familiar with what type of  
20 course Tyson requires before someone can operate a  
21 pallet jack?

22      A. Yes.

23      Q. Let's talk also about the maintenance of the  
24 pallet jacks. Do you know how it is that Tyson  
25 purchases their pallet jacks?

1       A. All of our pallet jacks are purchased on a lease  
2       agreement right now with Crown Forklift Company is who  
3       we lease the jacks through. We lease jacks for 36  
4       months.

5       Q. That was going to be my question. So every 36  
6       months you replace the jacks with a new one?

7       A. We replace one-third of the jacks.

8       Q. Do you have a rotating process?

9       A. Yes.

10      Q. All right. Does the jack stay in your plant for  
11      more than three years?

12      A. No.

13      Q. So -- so the longest that an operator will ever  
14      use a jack is going to be for three years?

15      A. Yes.

16      Q. And why is it that you rotate them out after  
17      three years?

18      A. The jacks are getting to the point where they  
19      start to break more, they're worn. We run them in a  
20      pretty rough environment. They're always wet. And you  
21      start having failures, so we only lease for three years.

22      Q. All right. Let's talk about what you do between  
23      the time that the jack arrives at the plant and when it  
24      finally leaves three years later. Can you walk me  
25      through in detail the maintenance that's required for

1 each of these pallet jacks?

2 A. Okay. Pallet jacks, we -- we main -- maintain  
3 them. I say, "we." I said part of my responsibility  
4 was refrigeration, actually refrigeration people are the  
5 ones that do the pallet jack maintenance.

6 Q. So is there a separate group that's responsible  
7 for pallet jacks?

8 A. Yes.

9 Q. And -- and how many employees or team members are  
10 in that group, approximately?

11 A. Seven.

12 Q. And are they specifically designated to make sure  
13 that the pallet jacks are maintained?

14 A. Yes.

15 Q. All right. So what types of maintenance do you  
16 do on the pallet jacks?

17 A. We do routine maintenance or breakdown  
18 maintenance. If there's a problem with the jack,  
19 someone will -- either supervisor or the operator will  
20 notify myself, one of the supervisors, or one of the  
21 refrigeration people, let them know that they've got a  
22 jack that has got a problem. We do routine maintenance.  
23 We do weekly preventative maintenance, check the jack  
24 over, make sure everything is operating correctly.

25 Q. Let me stop you there for one second. If -- if

1 someone reports that there's a problem with a pallet  
2 jack, what is your group's responsibility?

3 A. Fix it.

4 Q. And do you pull it out of service if there's a  
5 problem?

6 A. Sure. Normally, they bring the jack to the  
7 shop, jack shop, and it will be fixed right then.

8 Q. You mentioned that there's weekly maintenance.  
9 What is all entailed in weekly maintenance?

10 A. Weekly maintenance is basically an inspection,  
11 replacement of any worn or defective parts.

12 Q. And then is there a checklist that you go through  
13 on a weekly basis?

14 A. Yeah, there's a PM listing. Tells you what --  
15 what items you check on a weekly basis, a monthly, and a  
16 quarterly basis.

17 Q. Now, does every pallet jack go through that  
18 weekly inspection?

19 A. Yes.

20 Q. Prior to the operator ever actually operating the  
21 pallet jack, do they have an obligation to inspect?

22 A. Yes. There's OSHA regulations stating that you  
23 do a pre-operational inspection, safety inspection of  
24 the pallet jack before you operate it.

25 Q. All right. Let's talk about the monthly. How

1 does that differ from the weekly inspection?

2 A. Monthly is just more detailed. The weekly is  
3 basically a visual and operate everything. On a monthly  
4 inspection, you would pull -- open the panels up, check  
5 down further inside, give everything a grease job and  
6 cleaning.

7 Q. Now, would that be in addition to any reported  
8 problems or incidents with the pallet jacks?

9 A. Yes, sir. If a jack broke down on Monday, you'd  
10 fix it. And it came in Tuesday for an inspection, you'd  
11 do the inspection anyway.

12 Q. Are there enough pallet jacks at the plant that  
13 if one goes down, there's other options to use?

14 A. Now, that's kind of hard. There's jacks assigned  
15 to different areas in the plant. And whether or not  
16 there's backups or duplicate jacks, I -- I couldn't say  
17 that for sure. I -- I don't know --

18 Q. You mentioned --

19 A. -- how tight they are.

20 Q. You mentioned the monthly inspections. What  
21 about quarterly? What do you do on that?

22 A. Quarterly would be things like checking the  
23 linkage under the jack and replacing it, replacing  
24 bearings, and the drive wheels, things of that nature.

25 Q. Now, are there documentation that also go when

1     you complete the weekly, monthly, and quarterly?

2         A. There is documentation -- electronic  
3     documentation for the inspections now. Previously -- I  
4     guess prior to about April 2008 is when we started doing  
5     the electronic version. Prior to that, it was paper  
6     version.

7         Q. Let's talk about that. There's been some  
8     discussion about maintenance records. In October of  
9     2007, will you explain to the jury, first, what type of  
10    maintenance records there were at that time?

11        A. Okay. At that time, it was just a printed  
12    document, usually single sheet of paper that said,  
13    "Check the bearings, check the drive wheel for wear,  
14    check the drag link" -- you know, it's just a checklist,  
15    you check it off, and initial at the bottom. And  
16    that -- that was the inspection.

17        Q. And was it your responsibility as the maintenance  
18    manager to make sure those documents were being  
19    completed?

20        A. Yes.

21        Q. And were they back in October of 2007?

22        A. Yes, they were.

23        Q. Now, I understand that at some point, April of  
24    '08, you changed your system. How did you change the  
25    system?



1       A. We went to a computerized maintenance management  
2       system, and everything is electronic now. It's all on  
3       computer. But all the inspection data or completion  
4       dates on the preventative maintenance is now just on a  
5       computer.

6       Q. So when you switched over from having all the  
7       paper to the computers, did you keep all those papers?

8       A. No. We got rid of the papers. There's no  
9       requirement to keep that, and the lifts that were here  
10      at that time are no longer here. So why have the  
11      documentation?

12      Q. Did you have an occasion to review these weekly,  
13      monthly, and quarterly service reports, the actual  
14      documents themselves?

15      A. Yes, I've reviewed many of them.

16      Q. And is it your testimony to this jury that that  
17      type of maintenance was being performed in October of  
18      2007?

19      A. Yes.

20      Q. I want to talk with you a little bit about the  
21      incident involving Mr. Blackshire. It's -- it's his  
22      testimony in this case that he let go or I guess stepped  
23      away from the pallet jack. And when he did, first of  
24      all, a spring was engaged that took the handle up, all  
25      right? Assume with me those facts. Knowing the pallet

1 jack, is there a spring on the pallet jack that lifts  
2 the handle?

3 A. Yes.

4 Q. And why does that happen?

5 A. Well, when -- when you turn loose of the handle,  
6 the jack come -- or the jack handle comes up --  
7 spring-loaded up, and that applies the brake. So if  
8 you're running the jack at I'll say five mile an hour  
9 and you release the handle, it will spring up and the  
10 jack will stop.

11 Q. Now, alternatively, if you let go of the  
12 handle and for some reason it goes all the way down, is  
13 that also a braking mechanism when it's all the way  
14 down?

15 A. It -- the jack will not drive. It's not a  
16 braking mechanism, but it will not drive if it's all the  
17 way down.

18 Q. All right. What does it take to actually have  
19 a -- a pallet jack operate -- to move?

20 A. You -- you have to pull the handle down to a --  
21 I'd -- I'd say normal walking hand height. If you're  
22 standing up, if you push the handle down too far, the  
23 jack will not operate it -- or operate. If you let it  
24 up too high, it will not operate.

25 There's just a certain range where it would

1 be comfortable for most people to walk and operate the  
2 lift. You have the forward and reverse control. You  
3 have your up and down controls right there on the handle  
4 and horn control.

5 Q. Sir, back in October of 2007, did anyone ever  
6 report to you that a pallet jack accelerated on its own  
7 and injured an employee?

8 A. No.

9 Q. Since you've been working at the plant since  
10 2006, have you ever heard of that type of complaint?

11 A. No.

12 Q. Assume with me that someone let go of the handle,  
13 what type of mechanisms are on the pallet jack to stop  
14 it from moving?

15 A. Well, one, if you let go of the handle, the  
16 handle goes up. It -- through linkage enter -- or  
17 activates the brake. It's a mechanical link, and it  
18 applies the brake on the lift. 5.

19 Also, in the hand grip -- you've got your  
20 forward and reverse hand grip, like on a motorcycle, rev  
21 it up to make it go. Well, this you turn forward or  
22 reverse and that closes the micro switch which energizes  
23 the motor and tells the pallet jack to move.

24 For the pallet jack to move or for it to not  
25 move, you'd have to have the handle down to make it

1 move. You have to turn the -- you have to have it down  
2 and at the right height. You have to turn the grip to  
3 be able to get it to go forward or backward.

4 Q. Now, has ever -- any team member ever reported to  
5 you that when the handle was down, a pallet jack  
6 accelerated on its own?

7 A. No.

8 Q. Would your group, the maintenance department or  
9 refrigerator -- refrigeration, be responsible for  
10 repairing any pallet jack that was involved in an  
11 incident?

12 A. Yes.

13 Q. Have you repaired pallet jacks?

14 A. Yes.

15 Q. Have you ever repaired a pallet jack when it was  
16 alleged that it ran out of control?

17 A. No.

18 MR. MAYER: That's all the further questions  
19 I have. I'll pass the witness, Your Honor.

20 THE COURT: Cross examination?

21 CROSS EXAMINATION

22 BY MR. SKRABANEK:

23 Q. Good afternoon, Mr. Howard. My name is Paul  
24 Skrabanek, and I represent Mr. Blackshire here.

25 When was the last time you performed an

1 inspection on a pallet jack, personally?

2 A. Last time I personally performed one?

3 Q. Correct.

4 A. It's probably -- well, you say an inspection. A  
5 full inspection, like a monthly?

6 Q. Weekly inspection, let's say.

7 A. Weekly? It's probably been four years.

8 Q. And how many folks did you have in your -- under  
9 your Maintenance Department in 2007 when this incident  
10 occurred?

11 A. Approximately 30.

12 Q. And there -- how many pallet jacks in the  
13 department?

14 A. Probably 16.

15 Q. So 16 pallet jacks, we're talking about three  
16 years, okay, so what are we talking about, hundreds and  
17 hundreds of inspections between that time and today?

18 A. Yes.

19 Q. Safe to say that you can't remember every little  
20 inspection that goes on?

21 A. Yes, that's safe to say.

22 Q. Safe to say you can't even tell me which one of  
23 your maintenance workers has inspected which pallet  
24 jack?

25 A. Since we do not have the paper documentation, no,

1 I cannot.

2 Q. You -- you weren't there when Mr. Blackshire's  
3 incident occurred, right?

4 A. I -- I guess it -- I was if it occurred in 2007.

5 Q. I'm sorry. That was a bad question. You didn't  
6 personally witness Mr. Blackshire's incident, did you?

7 A. I -- I never heard anything about the incident.

8 Q. You didn't inspect the pallet jack that he was  
9 operating on the date of his injury, did you?

10 A. What pallet jack was it, sir?

11 Q. The pallet jack that we're here talking about  
12 today?

13 A. Pardon?

14 Q. Did you personally inspect the pallet jack that  
15 Mr. Blackshire was operating on the date of his injury?

16 A. What pallet jack was it?

17 Q. I mean, you can tell me.

18 A. The pallet jacks all have numbers. If you tell  
19 me what number it was, I could tell you if it was  
20 inspected by me.

21 Q. Do you remember if you inspected any pallet jack  
22 on the date of Mr. Blackshire's injury seeing that you  
23 hadn't inspected --

24 A. No.

25 Q. So you didn't inspect --

1 A. No.

2 Q. -- the pallet jack that Mr. Blackshire was  
3 operating?

4 A. No.

5 Q. So you can't tell me one way or another whether  
6 it was properly inspected that morning?

7 A. That morning?

8 Q. Correct.

9 A. The daily inspection is the operator's  
10 inspection.

11 Q. Well, where would I find that information?

12 A. On the operator's daily checklist.

13 Q. And where would I find proof that that was  
14 actually done that day?

15 A. Mr. Blackshire would have signed that saying that  
16 he did the daily inspection.

17 Q. Have you ever seen that document?

18 A. No, I don't -- I don't get that document.

19 Q. You don't know whether your Maintenance  
20 Department even inspected the pallet jack that day?

21 A. If it -- the Maintenance Department would have  
22 only inspected it if there was a weekly, monthly, or  
23 quarterly inspection due that day.

24 Q. Can you tell me when the last time a weekly  
25 inspection had been performed on this pallet jack before

1 Mr. Blackshire's injury?

2 A. All I can say is within seven days.

3 Q. Can you tell me the last time a monthly  
4 inspection had been performed on this pallet jack before  
5 Mr. Blackshire's injury?

6 A. Again, I could only say within 30 days.

7 Q. Would y'all have written that down in records?

8 A. There would be a checklist that was signed off  
9 with that.

10 Q. Have you looked at any of those records?

11 A. We do not have those records anymore.

12 Q. You don't know -- so since you didn't see the  
13 pallet jack that day, right -- and I'm right on that?

14 A. I don't know if I seen the pallet jack that  
15 day --

16 Q. You didn't personally inspect it --

17 A. -- because I don't know what pallet jack it is.

18 Q. You couldn't tell me how the brakes -- the spring  
19 brake was functioning that day, right?

20 A. No, I could not.

21 Q. You couldn't tell me how the throttle control was  
22 working that day?

23 A. No, I could not.

24 Q. You could not tell me how the brake system was  
25 working that day?



1 A. No, I could not.

2 Q. So you can offer no testimony whether they were  
3 working properly or improperly?

4 A. If they were not working properly, the operator  
5 should have notified maintenance. That's all I can  
6 tell.

7 Q. That's what Mr. Blackshire did after it ran over  
8 him, right?

9 MR. MAYER: Objection, argumentative, Your  
10 Honor.

11 A. I don't know.

12 THE COURT: Sustained. Let's move on.

13 MR. SKRABANEK: Pass the witness, Your  
14 Honor.

15 THE COURT: Anything further?

16 MR. MAYER: Very briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. MAYER:

19 Q. Although you don't have knowledge of this  
20 specific inspection, based upon the program that you  
21 have in place at the Maintenance Department, does every  
22 one of those 16 pallet jacks get inspected weekly,  
23 monthly, and quarterly?

24 A. Yes.

25 MR. MAYER: Nothing further, Your Honor.

1 THE COURT: Okay.

2 MR. SKRABANEK: Nothing further.

3 THE COURT: You may step down.

4 Who's your next witness?

5 MR. MAYER: Jessica Gatlin to the stand.

6 THE COURT: Okay.

7 (Witness sworn.)

8 JESSICA GATLIN,

9 having first been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. MAYER:

12 Q. Ma'am, will you please state your name for the  
13 record?

14 A. My name is Jessica Gatlin.

15 Q. Ms. Gatlin, can you tell the members of the jury  
16 a little bit about where you were born and where you  
17 were raised?

18 A. I was born in Shreveport. I was raised in  
19 Joaquin, Texas. I'm married and have two kids.

20 Q. How long have you been working at the Tyson  
21 plant?

22 A. In two weeks, I'll be there 15 years.

23 Q. And what is your current job position?

24 A. I'm the nurse manager.

25 Q. Tell us a little bit about your educational

1 background and what got you into nursing.

2 A. Yes, sir. I just like to help people. I've  
3 been -- I went to Panola College, and I've been a nurse  
4 since '96. And I've been straight at Tyson, so I just  
5 love to help people, so...

6 Q. And what is your job responsibility currently at  
7 Tyson?

8 A. I oversee Workers' Comp. I oversee some nurses.  
9 I have two nurses that work for me.

10 Q. And if someone is injured on the job, would they  
11 come to see you?

12 A. Yes, sir, or my nurses. Yes, sir.

13 Q. All right. We have -- we have talked about the  
14 WISP program that's in place. And I -- I understand --  
15 would -- would the WISP program come under your job  
16 responsibilities?

17 A. Yes, sir.

18 Q. And let's talk, first of all, when a -- a new  
19 hire comes to Tyson for the first time, a team member,  
20 I'm sure they get orientation.

21 A. Yes, sir.

22 Q. And what type of orientation or description are  
23 they given about the WISP program itself?

24 A. We have a packet of information. It's in the  
25 booklet orientation, and it states right there that we

1 don't have Workers' Comp. We're not a nonsubscriber.

2 And it has right there. They sign it.

3 Q. And at orientation, is it also verbally described  
4 what type of program Tyson has in place?

5 A. We have a program called WISP, which is Workplace  
6 Injury Settlement Program. It's over -- we don't have  
7 Workers' Comp. They come in, and they do stuff with the  
8 nurses, and we fill out everything in there with us  
9 first.

10 Q. Tell the members of the jury a little bit about  
11 that program. I know you're familiar with Workers'  
12 Comp. How does the Tyson program differ in the amount  
13 of weekly lost wages you receive compared to the Texas  
14 State?

15 A. We -- we pay a little more than, you know,  
16 regular Workers' Comp. We pay 85 percent of lost wages,  
17 so if somebody gets taken off work, they get a little  
18 more money than they do with just regular Workers' Comp.

19 Q. All right. And then what about if they are off  
20 work, when do their benefits kick in in comparison to  
21 the Texas program?

22 A. I think whenever -- on the Texas Workers' -- the  
23 program, there's so many days you have to wait. But we  
24 have -- when they -- the doctor takes you off that day,  
25 we want you to get paid for that day one, so --

1       Q. So do the benefits that Tyson provides its  
2 employees, are they actually better than the State  
3 program?

4       A. Yes, sir.

5       Q. Now, you mentioned that you get the booklet of  
6 information that described the program?

7       A. Yes, sir.

8       Q. Now, what I'd like for you to do is explain, if  
9 someone is injured on the job --

10      A. Okay.

11      Q. -- what happens then?

12      A. If somebody is injured on the job, they come to  
13 the nurse's station. Of course, we -- the nurse takes  
14 what happened down on a piece of paper. Then we have  
15 like a packet -- it's a red -- and it's got everything  
16 for them we need to fill out in a little red form. What  
17 the team member does, they come in and sit down with a  
18 nurse or myself and they go over every piece of paper  
19 with them and go over every piece of paper that's in --  
20 make sure they understand every little piece of paper.

21      Q. Now, is that actually on the date that the  
22 incident occurs?

23      A. On the date of the injury? Yes, sir, the date of  
24 injury it is, if they seek outside medical treatment.

25      Q. On the date of injury, if they come to you and

1 report it, tell me what you describe to them about the  
2 WISP program.

3 A. If they come in there, I describe to them  
4 everything, the benefits. We go through every piece of  
5 paper and -- the good stuff about it, and, of course,  
6 you know, it's voluntarily. We tell them -- even  
7 there's a waiver in there, annual status report in  
8 there. Pick a doctor form in there. They get to pick  
9 their own doctor. And then -- then we ask them if they  
10 have any questions.

11 Q. At that point in time, do you actually have them  
12 sign any of the waiver?

13 A. No, sir. They don't even have to sign the waiver  
14 that day. They get 20 day -- 10 days before they even  
15 have to sign.

16 Q. When is it that they come back and see you again?

17 A. It depends. If they -- if they hurt, they'll see  
18 us the same day. You know, we send them to the doctor  
19 if they want to go. But if not, we have 10 days from  
20 the date of injury, and we bring them back in here and  
21 say, you know, "Here's the paper again," go over it  
22 again.

23 Q. And when you say you go over it again, after that  
24 10 days, what are you going over?

25 A. The -- the waiver itself.

1       Q. And what about the waiver do you describe to the  
2 employees?

3       A. It's voluntary. They can sign if they want to.  
4 If they don't want to sign it, they don't have to. And  
5 it has in big letters on there what it says that -- you  
6 know, so they can see. And if they have any questions,  
7 they can feel free to ask me.

8       Q. What I'd like to do is talk a little bit about  
9 Mr. Blackshire's incident. Do you recall on October  
10 26th, 2007, Mr. Blackshire coming to see you?

11      A. Yes, sir.

12      Q. What I'd like for you to do is tell the members  
13 of the jury what he reported to you on October 26th.

14      A. He come in the nurse's station. He said he was  
15 driving the jack and he pinned himself against the  
16 pole.

17      Q. Did he give you any other description at that  
18 point?

19      A. Just he pinned himself against the pole.

20      Q. Did he --

21      A. And he was -- I'm sorry.

22      Q. Sure. Did he tell you at that point that the  
23 pallet jack itself had malfunctioned?

24      A. No, sir.

25      Q. Did he make reference to it accelerating into

1 him?

2 A. No, sir.

3 Q. All right. He -- he told you that he pinned  
4 himself against the pole?

5 A. Yes, sir.

6 Q. What did you do for him?

7 A. Asked him if he was okay. And he said he was  
8 fine and went back to work.

9 Q. When was the next time that you saw  
10 Mr. Blackshire?

11 A. He come back in Monday.

12 Q. And -- and on Monday, what did you do?

13 A. He brought -- he went to the doctor on his own  
14 over the weekend or whatever day, so I brought him back  
15 in there, and we filled out the paperwork in that little  
16 red folder I was talking about.

17 Q. Now, when you fill out the paperwork, was part of  
18 that the injury report?

19 A. Yes, sir.

20 Q. Now, in this case, we've looked at the injury  
21 report, and I'll --

22 MR. MAYER: May I have some leeway, Your  
23 Honor?

24 THE COURT: Yes.

25 Q. (By Mr. Mayer) I'll grab it in a second. We've



1 all seen it. The injury report was filled out by you,  
2 right?

3 A. He fills it out, and then like the places --  
4 like he may have trouble spelling, or I'll look over it,  
5 and if there's something missing, then, you know, I do  
6 help.

7 Q. Okay. So if there's any sections of the injury  
8 report that he can't complete, do you then help him  
9 out?

10 A. Yes.

11 Q. Well, in this situation, if he had trouble  
12 filling out -- thank you.

13 All right. This is the injury report. The  
14 testimony in the case has been that he didn't fill out  
15 No. 1, 2, or 3 on this report. Do you see that?

16 A. Yes, sir.

17 Q. Does that appear to be your handwriting?

18 A. Yes, sir.

19 Q. And when you complete that section -- first of  
20 all, why would you do that?

21 A. That way in case he -- sometimes, you know, team  
22 members have trouble. Sometimes they don't know how to  
23 say it. Sometimes they can't spell. So whoever -- you  
24 know, I don't mind helping.

25 Q. But when a team member reports to you an injury,

1     what do you put, for example, on No. 3?

2           A.   What exactly they say, what they tell me.

3           Q.   And so when Mr. Blackshire presented and said  
4     that he was driving the jack back up against the pole,  
5     is that what you put?

6           A.   I put exactly what they say.

7           Q.   After you complete this injury report, do you  
8     then give it to the team member?

9           A.   We go over it together line for line. Like if  
10    they miss -- you know, if they miss a word or whatever,  
11    I go back over it one more time, just, you know, make  
12    sure they don't miss nothing.

13          Q.   When you say you go over it, do you actually read  
14    it to them?

15          A.   Yes, sir. Well, in his case, you know, you  
16    can -- you read it to him or you can go over what they  
17    got answered and, you know, make sure that's right, you  
18    know, just ask them.

19          Q.   And then on the bottom, do you then ask the team  
20    member to actually sign the document?

21          A.   Yes, sir.

22          Q.   And did Mr. Blackshire sign this document in your  
23    presence?

24          A.   Yes, sir.

25          Q.   By that point in time, had he gone to see a

1 doctor?

2 A. On his own, yes, sir.

3 Q. And -- and who did he go to see?

4 A. I'm -- I'm not for sure whether the papers are in  
5 front of me. He went on his own, I think, to the ER.

6 Q. All right. And then once he comes to you and he  
7 fills out this injury report, does Tyson then provide  
8 him a doctor to go to?

9 A. Yes, sir. In that packet, he picks a doctor  
10 right then. He gets to go -- we got a panel, he gets to  
11 pick his doctor, and we send him to the doctor.

12 Q. And after he goes to the doctor, then does he  
13 come back to you and fill out more paperwork?

14 A. Yes, he bring his paperwork back from the doctor  
15 or whatever. If he gets prescription medicine or  
16 whatever he gets, we pay for it and everything, and he  
17 brings it to me.

18 Q. Now, we have heard about the -- the WISP waiver  
19 that was signed, and let's talk a little bit about it.

20 First of all, by signing the waiver, do you  
21 get certain benefits from Tyson?

22 A. Yes, sir. If you sign the waiver, I mean,  
23 everything keeps going. You get your medicine paid, you  
24 get doctors' visits paid. If you need X-ray -- I mean,  
25 anything.

1       Q. The date on this is November 14th. Would  
2       Mr. Blackshire have come back to see you on -- on  
3       November 14th?

4       A. Yes, sir.

5       Q. And what I'd like for you to do is explain how  
6       you go about talking about the waiver with the team  
7       member and presenting it to them.

8       A. Okay. When they come in -- actually they come  
9       in -- they come in the office, and I say, "It's time for  
10      your waiver." I give them the waiver. I let them read  
11      over it, and if they have any questions, they feel free  
12      to ask me.

13      Q. Now, do you recall giving Mr. Blackshire the  
14      waiver?

15      A. Yes, sir.

16      Q. You said that you -- you asked them if they have  
17      any questions?

18      A. Yes, sir.

19      Q. Is that a standard practice that you do?

20      A. Yes, sir. Every time I have a team member, yes,  
21      sir.

22      Q. Do you ask them if they understood the document  
23      that they're reading?

24      A. Yes, sir.

25      Q. Do they actually read the document in front of

1     you?

2           A.   Yes, sir.

3           Q.   And then before they ever go to that second page  
4     and they sign the document, do y'all discuss it?

5           A.   Yes.

6           Q.   What I want you to do is tell the members of the  
7     jury what in particular you discuss about the waiver and  
8     the benefits.

9           A.   Okay.  The main -- the basic thing is I tell them  
10    is that "This is your voluntarily right.  I'm not making  
11    you do this.  Tyson not making you do it.  You can do it  
12    if you want to."

13                   It says big letters right there in -- it's  
14    highlighted in yellow that they waive the right to sue  
15    the company, and I tell them that.  And then, you know,  
16    of course, the good stuff about it, all your medicine  
17    keeps going, you know, go to the doctor all the time,  
18    need X-rays, whatever, ain't no problem.  And, of  
19    course, ask if they've got any questions.

20           Q.   And after Mr. Blackshire signed what is Exhibit  
21    No. 15, did his benefits continue?

22           A.   Yes.

23                   MR. MAYER:  Your Honor, may we approach?

24                   THE COURT:  Yes.

25                   (Bench conference.)

1                   MR. MAYER: Your Honor, there's been a --

2                   THE COURT: Wait. Just let everybody get up  
3 here --

4                   MR. MAYER: Sure.

5                   THE COURT: -- who wants to visit with us.

6                   MR. MAYER: There's been a -- some  
7 statements -- some testimony about that the reason why  
8 he didn't go for any further treatment was because of  
9 his financial hardship and also that if he wouldn't have  
10 signed the document, he wouldn't have gotten benefits.

11                   Tyson actually has health insurance in place  
12 that if they don't go into the WISP program, they go  
13 into the health insurance program. And I'd like to  
14 discuss that given the fact that they said that if the  
15 WISP waiver is not signed, he wouldn't get benefits.

16                   THE COURT: Well, I haven't heard any  
17 testimony about -- that I -- you agree that's what the  
18 testimony has been, that he testified he didn't go  
19 because of financial hardship or not?

20                   MR. PIERCE: No, I -- I don't think that  
21 that's what he testified to. I think the question that  
22 was asked of Dr. Lee, and I just asked him, "Have you  
23 had patients before that had gaps in treatment and why,"  
24 and he rattled off several reasons.

25                   The other thing, Judge, if I can say this,

1 the problem we get into is this gap kind of coincides  
2 with the period of time where he's terminated. If he  
3 was terminated, none of this would apply anyway. So  
4 that -- that -- that becomes irrelevant at that point.

5 MR. MAYER: His health insurance benefits  
6 were in an -- in an alternative program. He can either  
7 go into the WISP program, or he can go into the health  
8 insurance program.

9 THE COURT: Well, I think we'll stay with  
10 rebutting the testimony that -- she's going to say, I'm  
11 sure, that she didn't tell him that he had to sign it to  
12 get medical benefits.

13 MR. MAYER: Right.

14 THE COURT: Then if that's what her  
15 testimony is, then -- then this other, I don't see the  
16 relevancy of it.

17 MR. MAYER: All right.

18 THE COURT: That's my problem with it. I  
19 understand that's what's going to be her testimony. If  
20 she changes on you, I'll re --

21 MR. MAYER: All right.

22 THE COURT: -- re-visit.

23 MR. MAYER: All right.

24 (Bench conference concluded.)

25 Q. (By Mr. Mayer) Ms. Gatlin, this is a yes or no

1 question. By -- by not going through the WISP waiver,  
2 were there alternative means for an employee to get  
3 their benefits paid?

4 A. Yes.

5 Q. Okay. Now, when Mr. Blackshire signed off on the  
6 WISP acceptance and waiver, did he then get to go see  
7 Dr. Nielsen?

8 A. Yes, sir. Well, he -- can I -- he already saw --  
9 before he gets to sign the waiver, they get to go see  
10 the doctor first.

11 Q. And so by the time he saw you, he had already  
12 been to the doctor once?

13 A. Yes, sir.

14 Q. And then that's when you discussed the program  
15 that's in place. You -- you mentioned the benefits as  
16 far as how it offers more to the employee than, say, the  
17 State of Texas does. Do you walk through those  
18 differences with an employee?

19 A. Yes, sir. And they're even given a booklet when  
20 they fill out the paperwork, and it's got everything  
21 about the program, a big thick booklet, and they give --  
22 every time we have injury, they get it.

23 Q. When you provided -- well, actually, any team  
24 member, when you provide the acceptance and waiver to  
25 any team member, if they have any question at all about



1 the waiver and acceptance, do you go through those  
2 questions?

3 A. Yes, sir. And if I can't answer them or they  
4 have one that they don't want me to answer, I will call  
5 corporate. I don't mind getting somebody else to help  
6 me.

7 Q. Is there someone else there at the plant that  
8 also has familiarity with the acceptance and waiver in  
9 HR?

10 A. Yes, sir, HR does.

11 Q. And -- and is that another place that the team  
12 member might go to if they, say, have questions about  
13 the program?

14 A. Yes, sir.

15 Q. Do you recall that Mr. Blackshire spoke with HR,  
16 as well?

17 A. Yes, sir.

18 Q. And what would HR do differently than what you do  
19 in -- in presenting the waiver?

20 A. Probably another perspective. You know, if he  
21 has any questions he don't want to ask me or he just  
22 wants to ask them, they go straight to them.

23 Q. When -- when you presented the waiver, do you  
24 recall Mr. Blackshire ever saying to you that he didn't  
25 understand the document?

1       A.  No, sir.

2       Q.  Do you ever recall him asking any specific  
3 questions that you couldn't answer?

4       A.  No, sir.

5       Q.  Did he ever tell you that he couldn't read the  
6 document?

7       A.  No, sir.

8       Q.  Have you had situations like that where a team  
9 member couldn't read?

10      A.  Yes, sir.

11      Q.  What do you do then?

12      A.  I read it to them and ask if they have any  
13 questions or, you know, clarify.

14      Q.  Is it your understanding that after and even  
15 before that he fell underneath what is called the WISP  
16 program with Tyson?

17      A.  Sir?

18      Q.  That Mr. Blackshire, after the injury, fell  
19 underneath the WISP program with Tyson?

20      A.  When he signed the paper, yes.

21      Q.  All right.  Did Mr. Blackshire, when he was in  
22 your office, ever raise any objection to signing the  
23 WISP waiver?

24      A.  Yes.  He didn't want to sign it, yes, sir.

25      Q.  And then when he did that, what did you do?

1       A.   Call HR.

2       Q.   Why would you do that?

3       A.   That way -- because that's our policy.  If they  
4   don't want to sign the waiver, we call HR right then,  
5   and he goes to HR to be placed on leave.

6       Q.   So he even got a second person to describe the  
7   document more?

8       A.   Yes, sir.

9       Q.   When he came back down, did he sign the document  
10   in front of you?

11      A.   Yes, sir.

12      Q.   Did you all discuss it again?

13      A.   Yes, sir.

14      Q.   At that point in time, did he have any additional  
15   questions?

16      A.   No, sir.  He signed it.

17      Q.   Once Mr. Blackshire is treated outside by an  
18   outside doctor, does he still come to you for any type  
19   of treatment?

20      A.   Are you talking about when they get placed on  
21   leave or when?

22      Q.   Well, any time after an injury like this, would  
23   they still check in with you?

24      A.   Oh, yes, sir.

25      Q.   All right.  After Mr. Blackshire and Tyson parted

1       ways, have you had any follow-up with Mr. Blackshire?

2           A.   No, sir.

3                   MR. MAYER:   I believe that's all the  
4       questions I have.   I appreciate your time.   I'll pass  
5       the witness.

6                   THE COURT:   Counsel, cross examination.

7                               CROSS EXAMINATION

8       BY MR. SKRABANEK:

9           Q.   Good afternoon, Ms. Gatlin.   My name is Paul  
10       Skrabanek.   I'm Anthony Blackshire's attorney.

11                   When Mr. Blackshire came in to see you the  
12       week after his incident, you helped him fill out that  
13       accident report, right?

14           A.   Oh, yes, sir, on that -- when he come back that  
15       Monday.

16           Q.   And the reason you did that is because you did --  
17       you testified that he didn't understand or know what he  
18       was filling out at the time?

19           A.   No, he understood.

20           Q.   Why is it that you filled out Nos. 1, 2, and 3,  
21       and he filled out the rest?

22           A.   Because he understood some of it.   Like the  
23       overhead cooler and stuff, you know, I put the overhead  
24       cooler there, and, you know, just helped him out.

25                   MR. SKRABANEK:   Your Honor, may I approach

1 the witness?

2 THE COURT: Yes.

3 MR. SKRABANEK: Counsel, I'm on Page 15.

4 Q. (By Mr. Skrabanek) Ms. Gatlin, if you'll just  
5 look at Page 15, Line 2. "Why is it that you filled out  
6 Nos. 1, 2, and 3?" Can you tell us what your answer was  
7 in your deposition?

8 A. Yes, sir. Because he had trouble writing and,  
9 you know, understanding, so I wrote for him. He didn't  
10 know how to spell the words, so I help him go through  
11 it, and I signed it and made sure he read over it --  
12 make sure it was wrong -- made sure there wasn't nothing  
13 wrong, make sure he understood.

14 Q. So, in fact, is your testimony now that he didn't  
15 understand this accident report when you were helping  
16 him fill it out?

17 A. Yes, he did understand the accident report.

18 Q. Did not?

19 A. He did. I just said I -- he understood what was  
20 going on, yes.

21 Q. Okay. But that contradicts your earlier  
22 testimony, though, right?

23 A. No. He did understand what was going on.

24 Q. Okay. If a -- but you -- your testimony is he  
25 did need some extra help in filling this out, correct?

1       A.   Yes, sir, I did help him.

2       Q.   And part of your job is to make extra careful and  
3   make sure what you write down is accurately -- accurate  
4   from what he says, correct?

5       A.   Yes.

6       Q.   And you got to be careful with that, right?

7       A.   Yes.

8       Q.   Because you want to get down what actually  
9   happened or his version of events, right?

10      A.   Yes, sir.

11      Q.   Because you were not there when the pallet --  
12   when he had this pallet jack incident, correct?

13      A.   That's why I write down what he said.

14      Q.   And you can only take his word for it?

15      A.   Yes, sir.

16      Q.   And your testimony to Tyson's lawyer was, I  
17   believe, "He was driving a jack and pinned himself up  
18   against a pole"?

19      A.   Yes, sir, that's what he stated.

20      Q.   And that's what you wrote down on the incident  
21   report?

22      A.   Exactly what he said.

23      Q.   Okay.  Let's look at this incident report.

24      A.   Yes, sir.

25      Q.   I see where you say, "driving jack."

1       A. Yes, sir.

2       Q. I boxed that in. And where does it say,  
3 "himself"?

4       A. "Driving jack backing up against the pole, and  
5 the jack ran and pinned him up against the pole."

6       Q. Doesn't say, "pinned himself up against the  
7 pole," does it?

8       A. "Pinned him up against the pole."

9       Q. But it doesn't say, "pinned himself," does it?

10      A. It does not say, "self," but it says, "him up."

11      Q. And your testimony is that he told you that he  
12 pinned himself, but you did not write that?

13      A. Exactly what it says. He's driving jack backing  
14 up against a pole, jack ran, pinned him up against the  
15 pole. I wrote down what he said.

16      Q. Your testimony to Tyson's lawyer was that --  
17 well, there was no testimony about the jack ran. You  
18 just said, "driving jack, pinned himself up against the  
19 pole." Why did you put jack ran in there?

20               MR. MAYER: Objection, Your Honor, asked and  
21 answered.

22               THE COURT: Overruled.

23      Q. (By Mr. Skrabanek) Why did you put "jack ran" in  
24 the incident report? He didn't say that to you.

25      A. Because that -- that's what the team member

1     stated, "driving jack, backing up against the pole, and  
2     jack ran -- you know, pinned him up against the pole."  
3     I just write down what he's saying.

4         Q.   Did you ask him what jack ran meant when he told  
5     you that?

6         A.   No, sir.

7         Q.   Were you curious about it?

8         A.   I believe what he said.

9         Q.   So do you believe that the jack ran?   Do you take  
10    Mr. Blackshire at his word?

11        A.   It's an electric jack.

12        Q.   You have no reason to dispute his testimony that  
13    the jack ran?

14        A.   He didn't question -- he said he was fine.

15        Q.   Now, you've treated other team members at Tyson  
16    for injuries related to pallet jacks, right?

17        A.   Yes, sir.

18        Q.   About how many while you worked there?

19        A.   About the pallet jack or just injuries total?

20        Q.   Pallet jack injuries?

21        A.   I can't get an estimate number, but I've treated  
22    some, yes, sir.

23        Q.   Was it about five to ten over your career?

24        A.   I don't remember.   I've treated some, though.

25        Q.   Do you remember testifying in your deposition



1     that it was probably five to ten?

2           A.   I don't remember, but I know I've treated some.

3           Q.   Do you want me to bring your deposition up to you  
4     to help you?

5           A.   You can.

6           Q.   Okay.

7           A.   I can read it.

8                   MR. SKRABANEK:   May I approach the witness?

9                   THE COURT:   Yes.   Let her refresh her  
10    memory.

11                   MR. SKRABANEK:   Page 19.

12           Q.   (By Mr. Skrabanek)   If you'll just look at Page  
13    19 here, Ms. Gatlin.

14           A.   "Maybe five to ten maybe, but I don't know  
15    exactly because I don't -- I have to look at my notes.  
16    I can't remember.   I got so many.   Everybody comes in."

17           Q.   Best recollection five to ten, then?

18           A.   Yes, sir, that's what it says.

19           Q.   Okay.   You stand by that?   Do you stand by that?

20           A.   Oh, yes, sir.   I mean, I treat -- I treat some.

21           Q.   Do you know anything about the training that goes  
22    into pallet operators at Tyson?

23           A.   That -- I don't have nothing to do with that.

24           Q.   Let's talk about this workplace injury settlement  
25    program.

1       A. Yes, sir.

2       Q. I want to talk specifically about the documents  
3 that you gave or provided to Mr. Blackshire the week  
4 after -- the first visit you had the week after his  
5 incident, okay?

6       A. The Monday?

7       Q. The Monday after. Okay. What all would you have  
8 handed him?

9       A. We have a red folder, like I stated earlier. It  
10 had the -- the WISP paper, the waiver to show you what  
11 it is. That way you don't have to sign it right then.  
12 The injury and the status report, The pick a doctor  
13 form, and they get to pick a doctor, and then the  
14 release of medical information so we can get the medical  
15 records.

16      Q. Are these -- are these documents prepackaged for  
17 you?

18      A. Yes. My nurse does them, yes, sir.

19      Q. Do they come down from HR?

20      A. No, sir. The nurses do them ourselves.

21      Q. Do you know who drafts them?

22      A. Who drafts them, like where the -- the originals  
23 come from?

24      Q. Correct.

25      A. They come from corporate.

1 Q. Do you know where corporate gets them?

2 A. No, sir. The print shop, I assume.

3 Q. Do you know -- have you fully read everything  
4 that's in this WISP program?

5 A. Yes, sir. We have a book we keep in our office  
6 that team members can refer to if they have a question  
7 about it. They're always welcome to come in and look at  
8 it. I have no problem.

9 MR. SKRABANEK: Can I approach and just hand  
10 her this and ask her if this is one -- one of the  
11 things --

12 THE COURT: Yes.

13 MR. SKRABANEK: -- she's given?

14 Q. (By Mr Skrabanek) Is this one of the documents  
15 that you would have handed Mr. Blackshire --

16 A. Yes, sir.

17 Q. -- initially?

18 A. Yes, sir. This one, it also comes in a little --  
19 like a little booklet -- a little booklet, too. Comes  
20 two different ways.

21 Q. How many pages in that, ma'am?

22 A. It is -- it doesn't have page numbers on it.

23 Q. There's a bunch of papers there, though?

24 A. Yes, sir.

25 Q. Okay. And this is -- fully describes Tyson's

1 workplace injury safety program -- settlement program?

2 A. The WISP program, yes, sir, and that's the  
3 pamphlet that comes from Tyson.

4 Q. Do you read this line-by-line with anyone that  
5 comes in your office that may be injured when you have  
6 to have these filled out?

7 A. No, sir. We give them a booklet.

8 Q. Did Mr. Blackshire take the booklet with him?

9 A. Yes, sir. Now, what he did with it, I don't  
10 know, but they're all given the booklet.

11 Q. Is he also presented with a waiver at that same  
12 time?

13 A. No, sir. He's just given the waiver to look  
14 at -- the -- when he first get hurt, so I know -- I can  
15 tell him, you know, in so many days, you'll be calling  
16 here and you'll be given this paper again. But he don't  
17 have to sign it right then.

18 Q. Did you -- do you remember whether you personally  
19 sat there with Mr. Blackshire this first visit, the  
20 Monday after?

21 A. The visit where he got hurt when he come back in  
22 there? Yes, sir. And my nurse was in there, too,  
23 because some of the paperwork is filled out by her, so,  
24 yes, we're both there.

25 Q. What's your nurse's name?

1       A.   Audra Lloyd.

2       Q.   How many people have you treated for workplace  
3   injuries since this incident?

4       A.   Oh, I do not know.

5       Q.   Can you remember every conversation you've had  
6   with every injured worker at Tyson between this incident  
7   and today?

8       A.   Not every one, no, sir.

9       Q.   Is it safe to say that you don't have a clear  
10   memory of exactly what was said between you and  
11   Mr. Blackshire and your nurse on the date of this first  
12   meeting the Monday after?

13      A.   The exact words, no.  Nobody does.  No.

14      Q.   Okay.  So you don't know what warnings you would  
15   have given him?

16      A.   No, I have a -- a place in protocol that we go by  
17   everything in that booklet, so I know, and, in fact,  
18   even if I do not remember, every piece of paper in that  
19   booklet, we went over every time.

20      Q.   Do you advise him he might want to seek some  
21   lawyer's advice on this WISP program?

22      A.   No, sir.

23      Q.   Why not?

24      A.   Because if he had asked questions, he can ask me.  
25   That's -- that's his personal preference.

1 Q. Have you ever been trained as a lawyer?

2 A. Oh, no, sir.

3 Q. Do you have any idea what the legal effects are  
4 of these documents that you're handing to these injured  
5 patient -- injured workers?

6 A. No, sir.

7 Q. Do you feel like you're qualified to explain the  
8 legal effect these documents have on these injured  
9 workers' lives?

10 A. No, I'm not a lawyer. I'm just a medical  
11 professional.

12 Q. And what Tyson does is they leave it up to you to  
13 explain this WISP program to these injured workers?

14 A. They give me the paperwork, and they get copies  
15 of them, and they're welcome to seek counsel if they  
16 want. That's up to them.

17 Q. But you don't make -- you don't say, "Hey, you  
18 might want to go check with a lawyer first"?

19 A. No, sir.

20 Q. What happens if -- let's fast forward to the  
21 second meeting. What happens if an employee -- an  
22 injured employee comes in and doesn't sign one of these  
23 waivers?

24 A. The same thing. They -- I call HR, and they get  
25 sent to HR.

1 Q. Okay. And then if they still refuse to sign it?

2 A. Then they'll be placed on a personal leave of  
3 absence in HR.

4 Q. And that's an unpaid leave of absence, right?

5 A. Ask HR. I think so, yes, sir.

6 Q. And so what you're -- in fact, what you're saying  
7 is that if you don't sign the waiver, Tyson sends you  
8 home?

9 A. No. If you do not sign the waiver, Tyson sends  
10 you to HR. And then it goes from there.

11 Q. Okay. So if you don't sign the waiver, Tyson --  
12 you send them to HR. If they don't sign the waiver with  
13 HR, HR sends them home?

14 A. Yes.

15 Q. And they cannot see a doctor under the program?

16 A. Oh, no. Yeah, they can see a doctor.

17 Q. Under the program.

18 A. No. Under the program, no. But they can see  
19 their own personal doctor.

20 Q. With money out of their own pocket?

21 A. Yes.

22 Q. It wouldn't be money coming from Tyson at that  
23 point?

24 A. They get placed on their own personal insurance.

25 Q. Isn't it true that you have to have a set amount

1 of days between your initial meeting and sending them to  
2 see a Tyson doctor and the time that they could sign a  
3 waiver?

4 A. Yes, sir.

5 Q. Why is that?

6 A. That way it gives them time to read the waiver,  
7 and there -- and there's 14 days. We don't rush them  
8 right then. They have time to fully understand. If  
9 they got any other questions, they can ask me.

10 Q. Anybody ever tell you that's a requirement under  
11 Texas law?

12 A. Under 14 days?

13 Q. Correct.

14 A. They get a copy of it. They can look at it right  
15 then.

16 Q. No, but has anybody ever told you that, that  
17 that's a requirement under Texas law --

18 A. No, sir.

19 Q. -- this waiting period? You've never heard that  
20 before?

21 A. No, sir.

22 Q. What's -- let's talk -- let's go back to when  
23 Mr. Blackshire initially came in to see you on the day  
24 of his injury.

25 A. Yes, sir.



1       Q. Was his medical condition clear to you at that  
2 point?

3       A. He was fine. He told me he wanted to go back to  
4 work. He reported his injury and went back to work.

5       Q. But you're not a doctor, right?

6       A. No, I'm not a doctor. No.

7       Q. Did you feel that he might should follow up with  
8 a doctor?

9       A. If he asked -- had any kind of pain, I would, but  
10 he didn't say nothing but "I'm going back to work and I  
11 just reported my injury."

12       Q. Did he tell you that he did follow up with a  
13 doctor the next week?

14       A. He went to the doctor on his own over the  
15 weekend. He brought his paperwork in Monday and told me  
16 then.

17       Q. And you didn't have any criticism of that?

18       A. No, sir. That's his personal preference if he,  
19 you know --

20       Q. Did he report to you when he came back he was in  
21 pain?

22       A. When he come back, he filled out the paperwork,  
23 yes, sir, then. Then we send him to the doctor.

24       Q. Now, jumping back to this waiver. I'm going to  
25 show you a section. It's Section 3.01 from the WISP

1 packet. I've highlighted a section. Have you seen that  
2 or read that section before?

3 A. Yes, sir.

4 Q. Why don't you read that out loud?

5 A. "Employee who has not become a participant of the  
6 program by the time they completed (sic) --

7 THE REPORTER: I'm sorry?

8 THE WITNESS: Am I going too fast? I'm  
9 sorry. I read very fast. I'm sorry.

10 A. ...acceptable to the employer shall cease upon  
11 ten business days after the date of the initial report  
12 of injury, the date that the employee receives a medical  
13 evaluation by a nonemergency care designated provider  
14 (sic).

15 Q. (By Mr. Skrabanek) Okay. What's that mean?

16 A. That means that they get to see a doctor before  
17 they can sign the waiver.

18 Q. Well, doesn't it mean that if you don't sign the  
19 waiver, then you're cut off under the plan, and you  
20 can't see a doctor under the plan anymore?

21 A. No, it states right there -- it says that they  
22 have to wait ten business days, so -- before they sign  
23 the waiver. So when they get hurt, like he did, then we  
24 would send him to a doctor, and then after them ten days  
25 are up, they bring -- and he did, he come back and

1 signed the waiver.

2 Q. And he came back after those ten days?

3 A. And I don't know exactly the day. I have to look  
4 at the paperwork.

5 Q. And assuming -- let's just assume in general for  
6 a second. If an employee comes back after those ten  
7 days and refuses to sign it, what this does -- this  
8 section does, it says you can't see a doctor under our  
9 plan anymore?

10 A. Are you asking a question?

11 Q. Yes.

12 A. Okay. I'm sorry, I thought you were just stating  
13 that.

14 They get to see a doctor. Now, like the  
15 thing says up there, ten days, they have to wait. They  
16 get to see a doctor. They get to pick who they get to  
17 go see, and that's what it states.

18 Q. They get to see a doctor only if they sign the  
19 waiver, right, after those ten days?

20 A. No. They get to see a doctor first before they  
21 sign the waiver.

22 Q. And if they refuse to sign the waiver after that,  
23 they don't get to see another doctor under the plan?

24 A. That's right.

25 Q. Now, let's talk about the second meeting you had

1 with Mr. Blackshire. This would have been the day that  
2 he signed this waiver form. Do you remember whether or  
3 not you actually sat down and talked to him about the  
4 waiver?

5 A. Yes, sir, he was in the office.

6 Q. I'm going to ask you a real specific question.  
7 Was it you or was it one of your -- the nurses you  
8 supervise who went through the Black -- Mr. Blackshire's  
9 packet with him?

10 A. The nurse did some of it, and I did some of it.

11 Q. Do you remember testifying differently in your  
12 deposition?

13 A. The nurse did do some of it. Look in his  
14 paperwork.

15 MR. SKRABANEK: Approach the witness, Your  
16 Honor?

17 THE COURT: Yes.

18 Q. (By Mr. Skrabanek) I'm going to go to 29,  
19 Ms. Gatlin. It's this first part up here on 29. That's  
20 the question. Can you read that out loud? Read your  
21 answer.

22 A. Yes, sir.

23 "Was it you or one of the nurses you  
24 supervised who went through the -- Mr. Blackshire paper  
25 with him."

1                   "I don't remember, but that's how we all do  
2 the same thing."

3       Q.   So you said you didn't remember in your  
4 deposition.

5       A.   Yes, sir, because I had to look at the paperwork.

6       Q.   So how is it that you remember that you actually  
7 participated in explaining this waiver to him in the  
8 second meeting the ten days later?

9       A.   Because I did the deposition, and I looked at the  
10 paperwork.

11      Q.   Did you read every sentence of the waiver to  
12 him the second --

13      A.   Yes, he reads it himself.

14      Q.   What's that?

15      A.   He can read it himself. I give him the waiver.

16      Q.   Did you specifically ask Mr. Blackshire -- and  
17 listen to my question real carefully. Did you  
18 specifically ask him this? Do you understand what that  
19 waiver says after he -- he got done reading it?

20      A.   I said, "Do you have any questions?"

21      Q.   That's all you said?

22      A.   Yes, sir.

23      Q.   So you don't know one way or another whether he  
24 understood that waiver after he read it?

25      A.   If I asked him if he had any questions and he

1 told me, no, that would --

2 Q. Well, all you would know, to be fair, is that he  
3 didn't have any questions?

4 A. Yes, sir, I asked him.

5 Q. You wouldn't know one way or another whether he  
6 understood?

7 A. He didn't say he understood. He didn't say he  
8 didn't understand. He just said, "I don't have any  
9 questions," because I asked him.

10 Q. Do you have any idea what happened in that  
11 meeting with HR that you testified --

12 A. No, sir.

13 Q. Do you know one way or another whether HR  
14 explained anything to him about the WISP program?

15 A. I was in my office, no, sir. I don't know what  
16 they talked about.

17 Q. Do you know one way or another whether they were  
18 able to adequately explain the WISP program and waiver  
19 form to Mr. Blackshire?

20 A. I don't know. I wasn't there.

21 MR. SKRABANEK: Pass the witness.

22 MR. MAYER: Can we approach, Your Honor?

23 THE COURT: Okay. Redirect.

24 MR. MAYER: May we approach?

25 THE COURT: Oh, approach. You can approach.

1 (Bench conference.)

2 MR. MAYER: I think -- I think we made it  
3 pretty clear that we weren't going to go into the other  
4 program, that being the health insurance. But I believe  
5 the door has been opened in the sense that he said if  
6 they don't get the WISP, they don't get any benefits.

7 She made a statement that was unclear that  
8 they go to their personal, but it's actually Tyson's  
9 health insurance, and I think that leads a question by  
10 his -- by his questions.

11 THE COURT: I don't agree with you. I'm not  
12 letting you -- I'm not going to open that up. I mean,  
13 she volunteered that answer, I believe. I don't believe  
14 he's the one that said that.

15 MR. MAYER: No. His -- his --

16 THE COURT: She can't open the door for you,  
17 Counselor. She's your witness. I'm overruling it.

18 MR. MAYER: Fair enough.

19 (Bench conference concluded.)

20 MR. MAYER: Redirect, Your Honor?

21 THE COURT: Yes.

22 REDIRECT EXAMINATION

23 BY MR. MAYER:

24 Q. Ms. Gatlin, you mentioned that you had treated  
25 some team members or saw some team members with a pallet

1 jack incident or injury. Did any of those other team  
2 members ever report to you a runaway pallet jack?

3 A. No, sir.

4 Q. Did they ever report to you a pallet jack that  
5 accelerated on its own?

6 A. No, sir.

7 MR. MAYER: No further questions. Pass the  
8 witness, Your Honor.

9 MR. SKRABANEK: Nothing further, Your Honor.

10 THE COURT: Okay. You may step down. Thank  
11 you.

12 THE WITNESS: Yes, sir.

13 THE COURT: Ladies and gentlemen, we're  
14 going to go ahead and recess for today. And in  
15 accordance -- I believe I told you that we'll start in  
16 the morning at 8:30. You be here just a few minutes  
17 before 8:30.

18 Now, it's real important that you not  
19 discuss this case with your friends or your respective  
20 spouses tonight. And, undoubtedly, if you see some --  
21 get home tonight, somebody's going to say, "Well, what  
22 are you doing? What happened down there?" And  
23 certainly you tell them you're on the jury, but it's  
24 been my experience in the last 40 something years that  
25 what happens next is they say, "What kind of case is



1     it?" Don't ever answer that question, please, because  
2     once you answer that question, undoubtedly the person  
3     you're talking to is going to say, "You know, I know  
4     something about a case like that," and then you start  
5     hearing things about matters not under -- you know, not  
6     sworn to. We want to decide this case solely on the  
7     evidence.

8                     So if you'd remember that, just tell them  
9     that Judge Ward has instructed us not to discuss the  
10    case and what kind of case it is. And I am instructing  
11    you that way. So if you'll keep those instructions in  
12    mind. And have a nice evening, and I will see you in  
13    the morning, and we'll get started, and I believe we'll  
14    get through with this case hopefully tomorrow.

15                    So you may leave the courtroom at this time.  
16    Thank you very much.

17                    LAW CLERK: All rise.

18                    (Jury out.)

19                    THE COURT: Please be seated. All right.  
20    We'll take motions now from the defendant.

21                    MR. MAYER: It's my understanding that the  
22    plaintiffs are going to be dropping their gross  
23    negligence claim.

24                    THE COURT: Well, that saves me -- is that  
25    correct?

1                   MR. PIERCE: That's correct, Judge.

2                   THE COURT: Well, that saves me from saying  
3 it's granted on that, so --

4                   MR. MAYER: Other than that, Your Honor, the  
5 defendants have no other motions.

6                   THE COURT: Okay. Then how much more time  
7 do you think you'll have?

8                   MR. MAYER: That was our last witness, Your  
9 Honor.

10                  THE COURT: Oh, okay. Well, I'm just trying  
11 to think timing-wise.

12                  Can you get them a draft of the charge here  
13 in 15 minutes or so?

14                  LAW CLERK: Yes.

15                  THE COURT: I was just saying, I will give  
16 you a draft of the charge here in just a few minutes and  
17 we could gather in the morning at 8:00 and see if you  
18 had any real heart burn-type issues. You know, we just  
19 have an informal charge conference, and if you have some  
20 real heart burn issues, well, we'll take -- I'll listen  
21 to you then, and then I will make whatever changes I'm  
22 going to make, and we'll take formal objections.

23                  I should have asked you -- I thought you had  
24 another witness for some reason. And I would have told  
25 them to come in at 9:00, but we might have to wait 10

1 minutes or so, but I'm thinking we can get it together  
2 pretty quick.

3 MR. MAYER: I think like Your Honor  
4 referenced this morning, we're pretty streamlined in  
5 the -- the charge.

6 THE COURT: Well, I think we've -- I don't  
7 know, we may not have everything in there that y'all  
8 have, but it made it a lot simpler.

9 Let me ask Mr. Pierce, you anticipate using  
10 any type of unit of time argument in your closing on  
11 placing a value because that has something -- I have an  
12 instruction I either put in or put out, you know, in  
13 the --

14 MR. PIERCE: Uh...

15 THE COURT: You don't know -- you don't  
16 know. Well, I'll just -- I'll tell you that won't --  
17 that one won't be in the charge, but I'll have a copy of  
18 it up here so that if you elect to make that argument,  
19 then I'll add something to the charge.

20 MR. PIERCE: Okay.

21 THE COURT: But if y'all -- we'll take a  
22 break. And if you can check in chambers -- I tell you  
23 what, I'll -- Mr. Mann's getting this charge together.  
24 I'd like to visit with counsel in chambers maybe just  
25 for just a few minutes while we're working on that. So

1 if you'll come on in in about seven or eight minutes,  
2 that will be good.

3 LAW CLERK: All rise.

4 (Recess.)

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## 1 CERTIFICATION

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3 I HEREBY CERTIFY that the foregoing is a  
4 true and correct transcript from the stenographic notes  
5 of the proceedings in the above-entitled matter to the  
6 best of my ability.

7

8

9

SHELLY HOLMES

Date

10 Deputy Official Reporter

State of Texas No.: 7804

11 Expiration Date: 12/31/10

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